p l a n n i n g

Featuring articles from:

Robert Schneider ◆Spencer M. Cowan ◆Lanier Blum◆
Sonia Garrison, Christine Westfall, Alison Weiner, and
Erin Crossfield ◆ Dan Broun

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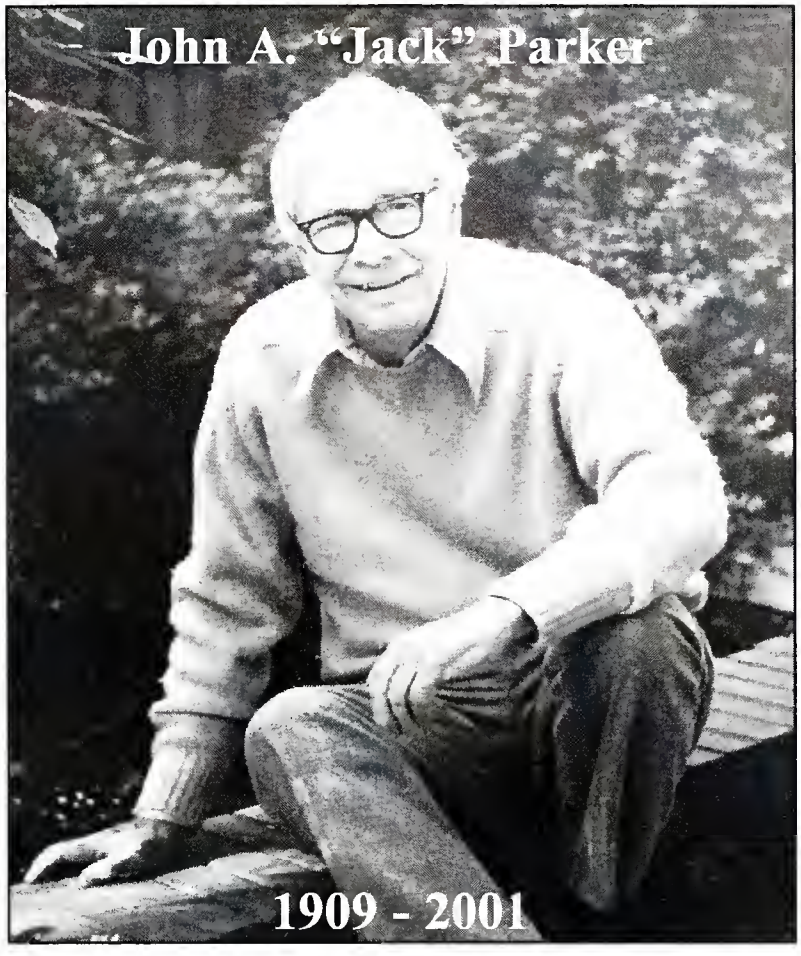

It is with sadness that we at *Carolina Planning* note the passing of John A."Jack" Parker, Professor Emeritus and former chair of the Department of City and Regional Planning at the University of North Carolina at Chapel Hill. Mr. Parker died on March 18, 2001 at the age of 91. A native of Kentville, Nova Scotia, he graduated from the Massachusetts Institute of Technology with a B.Sc. degree in Architecture and masters degrees in Architecture and Planning.

In 1946, Mr. Parker accepted an invitation to develop a graduate program in planning at the University of North Carolina. He served as the chair of the Department until his retirement in 1974.

"He was absolutely a pioneer," said Dr. Ed Kaiser, professor of planning at UNC. "He helped develop the notion of regional planning. And he made this the first program in the country actually based on a social science orientation... He took students under his wing. He would get a roster of students in the department and hold court with each student, asking them about their aspirations and what they were trying to accomplish."

During and after his tenure at DCRP, Mr. Parker was a tireless supporter of *Carolina Planning*, and his generous financial and moral support made the publication of this journal possible. He will be greatly missed.

Mr. Parker's family suggests that all memorials be made to the John A. and Jane C. Parker Endowment Fund, Office of University Development, University of North Carolina at Chapel Hill, P.O. Box 309, Chapel Hill, NC 27514-0309.

Carolina Planning

The Planning Journal of the Southeast

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Carolina Planning is a student-run publication of the Department of City and Regional Planning, University of North Carolina at Chapel Hill.

From the Editors:

We have been pleased with the responses to our last issue, which focused on efforts to rebuild in the wake of the devastating hurricanes that hit the North Carolina coast in 1999. This issue's articles cover a broader variety of topics, but are linked by the underlying theme of land use decisions. Whether addressing environmental, transportation or housing concerns, land use policy can play a key role in creating solutions.

We begin with updates on open space and smart growth initiatives in North Carolina by Marc DeBree and Elizabeth Federico. Next, Robert J. Schneider writes on improving coordination of land use and transportation in North Carolina's Research Triangle area through new forms of regional governance and cooperation.

The next three pieces examine tactics for providing affordable housing, a topic of growing concern nationwide. Spencer Cowan introduces us to the inclusionary land use regulations enacted by five states to encourage developers to build affordable units. Lanier Blum discusses local inclusionary housing programs and the prospects for developing such policies in North Carolina. And Sonia Garrison, Christine Westfall, Alison Weiner and Erin Crossfield describe the community land trust model, and how the Orange Community Housing Corporation is using a land trust to provide sustainable affordable housing in and around Chapel Hill.

Finally, we return to the theme of hurricane recovery, as Dan Broun describes Self-Help's innovative program to assist child care providers whose businesses were disrupted by Hurricane Floyd. For the larger recovery program to be successful, he points out, basic services such as child care must be in place.

With this issue, we have added a Letters to the Editor section. We're interested in reader response to the ideas presented here, and hope to generate a continuing discussion of planning issues of the Southeast. We look forward to hearing from you.

Editors
Elizabeth Federico
Kenneth Ho
Amanda Huron
Robin Zimbler

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The editors wish to thank David Godschalk and Lila Berry.

Cover Image:
Placing modular affordable housing on its foundation in the Walltown neighborhood in Durham, NC. Part of Self-Help's efforts to create affordable housing as part of community redevelopment efforts in the region. To read more about Self-Help's innovative programs see Dan Broun's article on page 43.

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Letters to the Editor

7 December 2000

Congratulations on your Summer 2000 special issue, "Planning Our Coast." The articles raise a number of important and interesting questions related to why we care about, and have enacted laws and programs to protect, our coastal environment and those who use it.

Richard Norton asks if local land use plans prepared under the North Carolina Coastal Management Act should be judged on the basis of the planning procedures used or the substance of the plans. If substance is judged, do local goals for economic development take precedence over state and regional goals for environmental protection?

My view is that planning procedures are important, but substance is key. Environmental protection should be the first priority, with economic development to take place with the least possible environmental disruption.

Coastal water quality is one clear and valid measure of the effectiveness of local plans and their implementation. County plans should be reviewed and approved relative to their track record in protecting coastal water quality. And, as Rachael Franks points out, NPDES permits, tied to plans, can be effective tools for water quality protection, along with zoning, best management practices, and land acquisition. I would add land suitability analyses and smart growth strategies to that list.

The North Carolina Commission to Address Smart Growth, Growth Management, and Development Issues is scheduled to report to the General Assembly in January 2001. It may recommend a tiered statewide planning program, with smaller localities preparing simpler smart growth plans. Such a tiered system also might be considered for the coastal area, reducing the requirement for full-scale comprehensive plans to the twenty counties and the larger cities, and simplifying the planning requirements for smaller towns. This would facilitate substantive plan review and make it easier to hold localities responsible for their share of environmental protection.

David R. Godschalk
Stephen Baxter Professor of City and Regional Planning
University of North Carolina at Chapel Hill

Planner's Digest

Million Acre Initiative Gets Underway

Marc deBree

In January of 2000, Governor Jim Hunt unveiled the Million Acre Initiative, a challenge to permanently protect an additional million acres of open space in North Carolina. This initiative came in response to a series of community meetings across the state in 1999 in which Governor Hunt's Interagency Task Force on Smart Growth solicited public input regarding the future growth of North Carolina. A clear message that resonated throughout many of these public forums was the need to protect integral open spaces threatened by sprawling growth in North Carolina.

The Million Acre Initiative hopes to achieve its goal of protecting open space in North Carolina by providing coordination and technical assistance to both public and private agencies and organizations in support of their land acquisition efforts. Although the Million Acre Initiative itself will not acquire land, the initiative will work with public and private partners to develop effective land acquisition programs. Such programs will be driven by locally generated priorities for land protection and will fashion locally appropriate conservation measures, such as fee simple purchase and easements, to ensure the protection of designated lands in perpetuity.

To determine if the Million Acre Initiative can help your community protect its essential open spaces, you should ask yourself the following questions:

- Does your community have all the parks, trails and greenways it needs?
- Are your drinking water supplies permanently protected?
- Are important historic and cultural areas permanently protected?
- Does your agricultural community have adequate access to the protection provided by conservation easements?
- Has the potential damage from floods in your community been minimized by sufficiently protecting floodplain areas?
- If wildlife habitats or areas that sustain rare species are important parts of your community, have they been permanently protected?
- If game lands are important to your community, have they been permanently protected?

If your answer to any of these questions is no, then your community may benefit from the support of the Million Acre Initiative. Please look to the Million Acre Initiative website at www.ncparks.net/millionacre for more information.

Marc deBree *is the Coordinator of the Million Acre Initiative through the North Carolina Department of Environment and Natural Resources. He holds a Masters Degree in City and Regional Planning from the University of North Carolina at Chapel Hill.*

Smart Growth in North Carolina

Elizabeth Federico

The North Carolina Smart Growth Commission completed its year-long mission in January with a list of recommendations for the future of land use policy in the state. The group agreed that the state legislature should grant local governments a set of new tools with which to manage growth. These tools will enable local governments to have more authority to regulate development and levy taxes and fees. The Commission also advised the legislature to develop a smart growth vision and to create a permanent commission with clear guidelines to ensure that state agencies implement the vision.

The Commission concluded that in order to achieve regional coordination of local land use plans, municipal and county governments require sufficient authority to regulate development and raise money for infrastructure and other improvements. It suggested that all local governments be given the power to assess taxes like those granted to Charlotte in 1997. The state legislature allowed Mecklenburg County residents to vote on a half-cent sales tax measure to help fund local transportation projects. Currently, only a handful of local governments have similar powers.

Other recommendations include requiring set-asides for moderately-priced housing in new housing projects, building more schools in urban areas, locating state offices in already developed areas, and implementing new measures to protect farmland, wetlands and beaches.

Despite the progress made by the Commission, there remain many points of contention on which Commission members could not reach consensus. Not the least of these is a functional definition of what "smart growth" actually is and what guidelines should be utilized for proper implementation of the Commission's recommendations. As a result, many of the Commission's recommendations remain in a conceptual stage of planning.

The General Assembly is expected to resolve a number these issues over the coming years, including how to ensure proper representation on the permanent commission and assigning who will be responsible for coordinating local plans at the regional level. However, with the current budgetary crisis, the legislature will be challenged to balance increased government costs and oversight with a reduced operating budget. Proposals to spend more money on farmland preservation, for example, are not likely to be implemented right away. The co-chairmen of the Commission, Representative Joe Hackney and Senator Howard Lee, plan to meet to prioritize its proposals and advise ranking members of the legislature.

Source: The Raleigh News and Observer

***Elizabeth Federico** is a master's degree candidate in City and Regional Planning at the University of North Carolina at Chapel Hill.*

Additional Smart Growth Resources & Information

In anticipation of the Smart Growth Commission's final report, other academic journals have devoted pages to a discussion of the legal and institutional aspects of growth management. The Fall 2000 edition of *Popular Government*, published by the University of North Carolina at Chapel Hill's Institute of Government, is a special issue focusing on "Growing Smart in North Carolina." Likewise, the *Wake Forest Law Review* dedicated its Fall 2000 issue to an evaluation of smart growth initiatives both in North Carolina and throughout the southeast. For links to other publications dealing with sustainable development in the region, visit the North Carolina Smart Growth Alliance website at *www.ncsmartgrowth.org*.

Changing Institutional Structures to Improve the Coordination of Land Use and Transportation in the Research Triangle

Robert J. Schneider

Introduction

When Sandy Ogburn, Assistant to the General Manager at Triangle Transit Authority (TTA), first arrived in the North Carolina Research Triangle region from Philadelphia, she planned to stay only two years. However, because of "the slower pace of life, all the amenities in the region, and the beautiful blue color of the sky," she and her family have made the Triangle home for over 25 years. During that time, Ms. Ogburn has been an active member of the Triangle community, serving as a member of the Durham City Council, as chair of the Durham-Chapel Hill-Carrboro Metropolitan Planning Organization (DCHC MPO) Transportation Advisory Committee, and as chair of the TTA Board of Directors.

Unfortunately, recent trends may threaten the high quality of life that has attracted people, like Ogburn, and businesses to the Triangle in the past. Traffic congestion and air pollution problems that have plagued other fast-growing metropolitan areas have come to the Triangle. According to the North Carolina Department of Environment and Natural Resources (NC DENR), the Research Triangle region experienced eight Code Red ("unhealthy") and twenty-three Code Orange ("unhealthy for sensitive groups") ozone days in 1999 (NC DENR 2000). Automobile emissions are a major source of this pollution, and an inefficient regional transportation system contributes to the emissions problem by exacerbating traffic congestion. Traffic volumes on Interstate 40 at the Wake-Durham county line increased from about 71,000 vehicles per day in 1990 to over 101,000 vehicles per day by 1995 (Eisenstadt and Hoar 1995). Commuters often spend an hour traversing the 10-mile stretch of Interstate 40 between Research Triangle Park and Raleigh. The region's congestion problem has increasingly drawn press coverage, with helicopter traffic reports and live views from traffic cameras broadcast each night on the local news.

Ms. Ogburn attributes much of the blame for the Triangle's worsening congestion to a lack of coordination between the region's land use and transportation decision-makers. She stated in a recent interview, "We [in the Triangle region] are quickly going the way of many large metropolitan areas by not acting regionally. Air pollution does not stop at the county line. It's not a Durham problem. It's not a Raleigh problem. It's *our* problem as a region." She suggests also that the economic viability of the Triangle, which is dependent on the region's quality of life, will be damaged when agencies and municipalities act individually. Over the past few years, businesses have begun to question moving to and staying in the Triangle because their employees are frustrated with air pollution and traffic congestion problems. Ogburn warns, "Ultimately, without regional coordination, our quality of life will be diminished, and the Triangle will become a less desirable place to live. People will search for greener pastures—literally" (Ogburn 2000).

Air pollution and traffic congestion are one result of land use and transportation decisions that are made by individual municipalities, such as Raleigh, Durham, Chapel Hill, and Cary, without consideration of their effects on the region as a whole. These four cities and nearby communities compose the Triangle region of North Carolina (Figure 1). The major

employment center of the region, Research Triangle Park, and the Raleigh-Durham International Airport are located in the center of the "triangle." Malls, sporting events and most jobs are within an hour's drive of almost any household in the region. Because Triangle residents travel between all communities in the region to take advantage of social, cultural, employment, and other resources, it makes sense to use regional approaches to planning and share the costs and benefits of development.

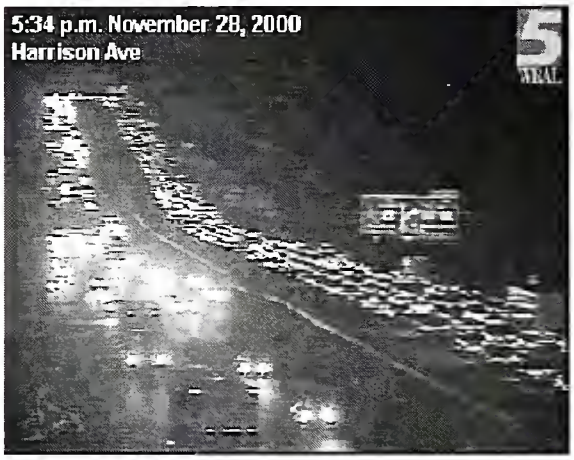

Figure 1: Regional Traffic Congestion
Source: WRAL

Purpose and Methodology

This paper argues that the lack of coordination between localities with land use decision-making authority and regional agencies with transportation decision-making power causes the Triangle region to develop unsustainable land use patterns and transportation systems. The purpose of this paper is to:

- suggest general keys to success for cooperative regional governance structures;
- evaluate the effectiveness and feasibility of alternative institutional frameworks for regional coordination in comparison to the current land use and transportation decision-making structures in the Triangle; and
- recommend five institutional changes that could be adopted separately or in combination to improve regional coordination in the Triangle region.

Two sources of opinion, responses to a brief questionnaire from five regional agencies located in different parts of the country (Alabama, California, Illinois/Iowa, North Carolina, and Oregon) and academic literature on inter-jurisdictional cooperation, suggest keys to success and guide the evaluation and recommendations.

Taking a Regional View

Proponents of regional coordination of land use and transportation development cite numerous planning issues that are the result of the balkanization of local governments within a region and a lack of concern about the impacts of development and regulation policies on other jurisdictions (MSRC 1993; Chapralis 1994; Pincetl 1994; Baldassare, *et al.* 1996; Leo, *et al.* 1998; Rusk 2000). Research has identified several problems that relate specifically to coordinating land use and transportation between jurisdictions:

- *Inefficient regional development patterns* determined by land use choices made at the local level tend not to support higher densities in locations that will optimize the efficiency of regional transportation systems (Porter 1997; Rusk 2000).
- *Inefficient transportation system* leading to poor connectivity between roads and transit systems across jurisdictional boundaries. Less direct transit routes result in fewer transportation mode choices for residents, and awkward road connections result in more air pollution and time spent in traffic (Porter 1994; Baldassare, *et al.* 1996).
- *Individual local development choices* result in greater dispersion of jobs throughout a region. Low-skilled jobs become less accessible to workers with little money to spend on transportation (Pincetl 1994; Rusk 2000).

- *Interstates and other freeways* make "greenfield" sites at the edge of metropolitan areas accessible and attractive for development. As a result, central city lots and buildings that are served by roads, sewer, utilities, schools, and other services are abandoned for these new sites that are not served by infrastructure and public services and may be sensitive environmental areas or productive farmland (Porter 1997).

Critics of regional cooperation state that there is a lack of concrete evidence linking political fragmentation to specific problems. Detractors also point out that larger governments are inefficient, and that small local governments provide citizens with increased choice, more responsiveness and a greater chance for public input in land use and transportation decisions (Pincetl 1994; Baldassare, *et al.* 1996; Porter 1997).

Movement Towards Regional Strategies in the Triangle

Recent initiatives show that there is receptiveness towards using regional strategies to coordinate land use and transportation decisions in the Triangle. In 1972, the Triangle J Council of Governments (Triangle J COG), one of 18 North Carolina COGs, was formed as a voluntary organization of municipal and county governments from the six counties of the region (Figure 2). The Greater Triangle Regional Council (GTRC), a coalition of developers, environmentalists, farmers, neighborhood activists, business owners, university representatives, and chamber of commerce members from the region, was formed in 1993 to provide a private perspective on the region's problems (Warrick 1993). GTRC helped to develop a series of "smart growth" principles for the Triangle region (Leavenworth 1999). The principles include:

- Design new and preserve existing neighborhoods and communities to foster walkability, safety and a sense of place;
- Promote different mixed-use centers of various scales for each city, town and crossroads in the Triangle to serve as centers of civic, social, cultural, and economic life, and as transportation hubs;
- Create a seamless, regional, multi-modal transportation system which interlinks new and existing residential, employment, commercial, and recreational areas;
- Promote development patterns and designs that take advantage of and support regional and neighborhood transportation systems;
- Preserve more natural areas and open space and provide for their interconnection at local and regional levels; and
- Coordinate land use development and transportation infrastructure and services to help achieve each of these principles.

There has also been state support for linking land use and transportation at the regional level. The North Carolina Commission to Address Smart Growth, Growth Management, and Development Issues ("Smart Growth Commission") is developing recommendations that it will present to the state legislature in January 2001 (Godschalk 2000). One of the recommendations the Smart Growth Commission is considering is for the state to allow localities to voluntarily form regional governments. Under this arrangement, the voluntary regional governments will adopt regional smart growth plans, and if members adopt local smart growth plans consistent with the regional plan, the localities in the region could have access to a "smart growth toolbox" (Stradling 2000). This would allow Triangle communities to use a series of state supported smart growth policies, such as transfer of development rights or impact fees on new development, without a formal act from the state legislature. Regions that require consistency with a regional smart growth plan would also be eligible for state funded incentives to implement regional planning efforts. This type of initiative could result in a regional forum to unite land use and transportation development decisions in the Triangle.

Keys to Success for Regional Coordination of Land Use and Transportation

Modeling regional strategies after successful regional initiatives in other parts of the country could help ensure the success of regional initiatives in the Triangle. Responses from the five regional agencies and other academic research suggest there are several critical elements to creating a regional institutional structure that fosters integrative decision-making (Table 1). These elements fall under two main evaluative criteria, feasibility and effectiveness. A regional structure's *effectiveness* is the extent to which the organization is able to get results by implementing land use and transportation development tools and decisions. A regional structure's *feasibility* is the degree of difficulty in maintaining the necessary institutional arrangements from political, legal and technical perspectives. Equity, or the ability of agencies to include all regional stakeholders in land use and transportation decisions, is an important component within this category. Regional institutions must be equitable in order to maintain the support of grassroots and other public interest groups.

The literature shows that regional governments are most *effective* when agencies:

- Integrate a number of tools to create a comprehensive regional development program (Lassar 1991; Leo, *et al.* 1998);
- Establish concrete, understandable, common goals for communities within the region (Porter 1997);
- Establish joint advisory committees to address land use and transportation issues;
- Promote active communication and collaboration between jurisdictions; and
- Emphasize implementation of plans and programs.

It also shows that regional initiatives are most *feasible* when agencies:

- Solicit public involvement in the land use and transportation process (Carlson and King 1998);
- Take a bottom-up approach to developing regional plans, work with local jurisdictions as much as possible, and allow local implementation of regional strategies (Baldassare, *et al.* 1996);
- Understand traditional institutional barriers to regional coordination, such as local home rule authority (Porter 1997);
- Obtain state support for regional cooperation (Porter 1997; Carlson and King 1998); and
- Define a clear objective (such as reduction of regional air pollution, reduction in regional traffic congestion, or better management of regional infrastructure) that requires regional coordination to be achieved (Chapralis 1994; Porter 1997).

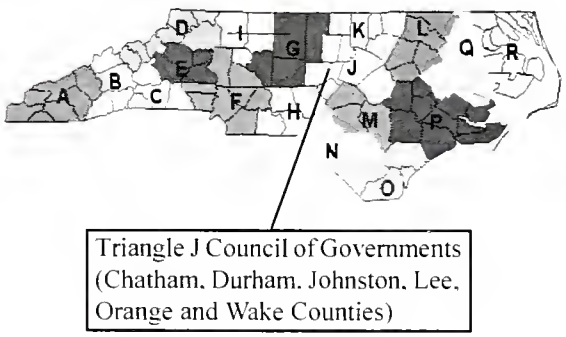

Figure 2: North Carolina Councils of Government
Source: Land of Sky Regional Council, NC Councils of Government

Current Institutional Arrangements

The Triangle's current institutional structure has many of the attributes that should lead to successful regional coordination as mentioned above. Yet, an alternative institutional arrangement may be able to achieve greater effectiveness while maintaining feasibility.

Established Institutional Arrangements

The initiatives of the GTRC and other proponents of regional cooperation have promoted this concept within the Triangle's established institutional framework. However, these initiatives may not be successful if the

current power structure for land use and transportation decisions remains in place.

Currently, four government agencies influence regional transportation and land use planning in the Triangle. Triangle J COG plays a role in facilitating agreements between localities, providing data and suggesting principles for land use and transportation development. The region has two separate Metropolitan Planning Organizations, the Capital Area MPO (CAMPO), which represents areas around Raleigh, and the Durham-Chapel Hill-Carrboro MPO (DCHC MPO). Both MPOs have the power to develop transportation implementation programs and to distribute state and federal transportation funds. Finally, the Triangle Transit Authority has been given the responsibility of planning and operating a regional transit system.

Despite the existence of these regional governments, current institutional arrangements dictate that land use planning and development decisions remain firmly within the administrative purview of municipal and county government. Local governments have the power to:

- Develop comprehensive land use plans;
- Enact zoning ordinances/establish zoning districts;
- Raise taxes and acquire land; and
- Create subdivision and transit-oriented development guidelines.

In contrast, regional governments play more of an advisory or clearinghouse role without a great deal of decision-making power. For example, TTA has limited power to acquire land within and around the right-of-way of its future regional rail corridor. TTA has encouraged local municipalities to zone a high-density mix of land uses in areas near future rail stations in its Station Area Development Guidelines (TTA 1998), yet it can do little if municipalities such as Cary or Chapel Hill decide to zone areas near future stations as low-density residential. Hence, local land use decisions will have a significant impact on the efficiency of the future rail system as a whole.

Triangle J COG provides data to municipalities that may have small staffs or budgets so that all parts of the region can achieve a basic level of land use and transportation planning. Yet, membership in Triangle J is not mandatory, and localities such as Siler City and Wilson Mills are not represented. Under its voluntary structure, Triangle J COG can:

- Mediate land use and transportation disputes between localities;
- Provide land use and transportation data to all municipalities in the region;
- Develop model ordinances for localities; and
- Establish regional land use and transportation principles.

Finally, while COGs like Triangle J may develop regional principles, they have no power to implement their recommendations (Municipal Cooperation Guide 1993). Therefore, their plans are often "ignored almost at will by member local governments" (Porter 1997). For a regional agency to have true land use and transportation power, it must be given statutory home rule powers, there must be an express grant of powers to the agency through a state constitutional provision for regional governments, or there must be specific state or federal legislation that allows the consolidation of local municipalities to form regional governments (Richardson 2000).

Alternative Institutional Arrangements

The Research Triangle could improve regional coordination of land use and transportation development by adopting a different structure of regional governance. Experiences from other regions in the United States provide examples of successful inter-jurisdictional arrangements. Table 1 shows how the effectiveness and feasibility of regional initiatives could be affected or improved under alternative arrangements to the present regional government structure in the Triangle.

Table 1 describes six regional governance structures that are currently used in regions of

Table 1: Institutional Arrangements to Coordinate Land Use and Transportation Planning

Institutional Arrangement		Potential to Improve Land Use and Transportation Coordination		
	Description/Powers	Effectiveness	Feasibility	Example(s)
Voluntary Cooperative Arrangement Between Local Governments	Regional councils of governments or public/private regional organizations that foster communication or settle disputes between jurisdictions, provide data and technical expertise, and set regional goals	+/-	+/-	Triangle J Council of Governments (Triangle Region); South Alabama Regional Planning Commission; Bi-State Regional Planning Commission; Puget Sound Council of Governments (a)
Mandatory Membership in Regional Commission	Agency collects annual dues from all municipalities in region to hold regional public meetings or develop advisory regional plan	+	+	Atlanta Regional Commission (b)
Single-Purpose Regional Agency	Regional Public Service Authority or Regional Environmental Conservation Agency providing a specific service to region, such as air quality, sewer, airport, or transit management; often have implementation power over specific service	+/-	+/-	Triangle Transit Authority (Triangle Region); Bay Area Air Quality Management District; New Jersey Pinelands Commission; San Francisco Metropolitan Transportation Commission (c)
Multidisciplinary Agency with Joint Mission of Land Use and Transportation Coordination	Regional transportation agency with land use personnel or developers on staff; may have power over land use development in transportation corridors or near transit stations	+	+/-	Washington D.C. Metropolitan Area Transit Authority (d)
Single Metropolitan Planning Organization	Agency mandated by federal legislation to coordinate transportation planning and allocate federal and state transportation funding throughout regions of over 200,000 residents	+	+/-	Durham-Chapel Hill-Carrboro MPO or Capital Area MPO (Triangle Region); MPOs in all urban regions of the United States (e)
Formal Metropolitan or Regional Government	Single government body with complete land use and transportation planning, regulation and implementation control over entire region; officials may be elected under state-granted Home Rule power or appointed from localities	++	--	Portland Metro Council; Twin Cities Metropolitan Council (f)

Status Quo Institutional Arrangement=land use authority at local level; voluntary regional council of governments; transportation authority split between two MPOs; one single-purpose transit agency

KEY: ++=major positive change from status quo for given criterion; +=minor positive change from status quo for given criterion; +/- =no improvement or mixed evaluation for given criterion; - =minor negative change from status quo for given criterion; -- =major negative change from status quo for given criterion

SOURCES:

(a) Porter 1992; Atkins 1993; MRSC 1993; Pincetl 1994; Porter 1994; GTRC 1997; Porter 1997; Rusk 2000
(b) GTRC 1997
(c) Lassar 1991; Easley 1992; Porter 1992; Atkins 1993; Chapralis 1994; Pincetl 1994; Baldassare, et al. 1996; Porter 1997
(d) TCRP 1998
(e) Atkins 1993; Pincetl 1994; Rusk 2000
(f) Atkins 1993; Rusk 2000

the United States. The institutional arrangements are not mutually exclusive. For example, the Triangle region has a voluntary cooperative agreement between local governments, a single-purpose regional agency, and two metropolitan planning organizations. The rating of a regional institution's effectiveness represents the positive or negative change, in comparison to the Triangle's current structure of governance, with respect to the extent to which the region is able to achieve coordination of land use and transportation by using regional development tools. The rating of a regional institution's feasibility represents the positive or negative change, in comparison to the Triangle's current structure of governance, with respect to the degree of difficulty that the institution will have implementing land use and transportation decisions from a political, legal and technical perspective. The institutional arrangement ratings are not taken from the perspective of any of the Triangle's regional organizations, local governments or business or environmental interests; they are based on evidence that is presented throughout the paper on the success or failure of these institutions in other regions of the United States.

Evaluation of Institutional Arrangements

Currently, the Triangle Region has a voluntary cooperative arrangement between local governments (Triangle J COG), a single-purpose regional agency (TTA), and two separate MPOs, CAMPO and DCHC MPO. The effectiveness and feasibility of regional coordination of land use and transportation may be improved if one or several of the alternative institutional arrangements are adopted. Implementing a more comprehensive regional strategy may be the best way to coordinate land use and transportation development in the Triangle.

Effectiveness and Feasibility

As stated earlier, the *effectiveness* of an institutional arrangement is based on the degree to which the region's governing powers can be used to coordinate land use and transportation development. Several agencies in the Triangle have stated missions to coordinate land use, transportation or both across the region; however, land use planning power is currently held by individual local and county jurisdictions within the Triangle region. Therefore, an alternative institutional structure could be more effective for coordinating land use and transportation systems.

Based solely on effectiveness, creating a government agency that would cover a large geographic area would appear to be an easy solution to improve coordination of land use and transportation development in the Triangle region. Empirically, however, the feasibility of inter-governmental arrangements tends to decrease as the size of their jurisdictions increases. Land use control is a "ferociously jealously guarded local power" (Pincetl 1994). Resistance to regional government comes both from public policy and public sentiment.

There tends to be political support in the Triangle for the status quo regional institutions. Moreover, councils of governments like Triangle J are found in every state and are even needed to qualify for some state and federal funds, many regional agencies like TTA are created to provide public transit service, and MPOs are mandated federally. Therefore, adopting a new land use and transportation policy-setting structure in the Triangle would alter institutions that are both familiar to residents of the region and used commonly throughout the nation.

Two main legal obstacles affect the feasibility of regional governance to coordinate land use and transportation planning: 1) most state enabling legislation causes land use planning to be executed at the local government level, while its impact on transportation corridors and infrastructure extend across local boundaries; and 2) federal legislation (i.e. Transportation Equity Act for the 21st Century - TEA-21) mandates that transportation planning be executed at the regional government level, yet regional Metropolitan Planning Organizations do not have the legal power to control land use.

Recommendations

Though each of the following recommendations could be adopted separately, a

comprehensive regional strategy may be the most beneficial for the Triangle region. For example, a regional sales tax may be most effective and feasible if it is administered by a council of governments that all local governments participate in and which has the power to require that local land use and transportation decisions are consistent with a regional plan.

1. Require Mandatory Membership in the Triangle J Council of Governments.

The North Carolina General Assembly could enact a bill requiring that all localities become members of their COGs. Each municipality would be charged an annual fee based on its number of residents. This would provide more resources to Triangle J and also ensure local representation on the council and give all localities and counties in the Triangle a greater stake in the plans and recommendations of the regional agency. The Atlanta Regional Commission (ARC) utilized mandatory membership and a per capita annual fee to successfully develop an advisory regional plan (GTRC 1997). ARC used the annual $0.80 per capita fee to hold public meetings and gather input from citizens to develop the plan. Local planners credited ARC with improving communication among localities and discouraging development with adverse regional impacts (GTRC 1997). In the Triangle, fee revenue could be used to hire more staff, collect and provide additional data, and facilitate disputes between municipalities. Though mandatory membership and an annual fee still would not allow the cooperative agency to implement and enforce land use and transportation decisions, it may provide a greater incentive for localities to pay attention to the land use and transportation guidelines provided by Triangle J. Also, because mandatory participation and annual fee requirements must be mandated by state legislation, this act would send a powerful message to local governments about the importance of regional coordination.

2. Establish a Land Use Division in the Triangle Transit Authority that has power over land use decisions in transit corridors and station areas.

In anticipation of its Regional Rail Initiative, TTA could follow the model of the Washington D.C. Metropolitan Area Transit Authority (WAMTA) by establishing a land use division within the agency. Under this arrangement, TTA could ensure that land uses within transit corridors and near transit stations are transit-supportive. Specifically, by working with local officials, the agency could encourage higher density and a better mix of land uses to support ridership on the regional system. Further, official corridor and station land use plans could be created by TTA, or localities could be required to comply with TTA land use guidelines. These changes would improve the overall success of transit in the Triangle region.

WAMTA's land use division develops advisory land use plans for transit corridors and areas near transit stations. Although WAMTA could not establish zoning regulations, its joint land use-development division worked closely with local jurisdictions to foster appropriate rail station area development patterns when planning the Washington regional rail system (TCRP 1998). A similar arrangement could work in the Triangle region. Ideally, individual localities would give up some local control over land use around rail stations so that TTA could establish mixed use zoning in transit station areas and corridors and mandate local consistency with station area development guidelines. However, even if TTA's land use power was limited, or if another regional governmental agency was granted land use authority, a land use division could advocate for a mix of land uses and moderate to high residential and commercial densities developed near stations in Durham, RTP, Morrisville, Cary, and Raleigh. These land uses would help support high ridership levels when trains begin to run in 2007. Unfortunately, there would most likely be strong political resistance to TTA having all transit corridor and station area land use authority.

3. Merge the Raleigh and Durham MPOs.

With the support of local municipalities, the two MPOs could be consolidated into one agency that would coordinate transportation planning and programming for the entire region. Under a consolidated MPO, all municipalities within the Triangle would be able to work with a single organization towards a single regional vision. Ideally, this would result in the funding of projects that extend beyond current jurisdictional boundaries to the region as a whole, such as transit connections between Raleigh and Durham.

The Bi-State Regional Planning Commission operating in the Quad Cities region has jurisdiction over four distinct cities, Davenport, IA, Bettendorf, IA, Rock Island, IL, and Moline, IL. The commission transcends municipal, federal and geographic boundaries to serve communities on both sides of the Mississippi River. Like these residents of Iowa and Illinois, who make a large number of trips among the Quad Cities, residents of Chapel Hill and Durham make a large number of commuting and social trips to Cary and Raleigh and vice versa. Therefore, a single MPO arrangement might also be effective in the Triangle.

Combining the two MPOs is legally feasible because the state legislature has already passed a law to allow the Durham and Raleigh planning organizations to merge. CAMPO, however, opposed the merger (*The Chapel Hill News*, 7/12/00), possibly out of concern that local interests would not be represented by a larger agency. For example, Chapel Hill may have less power to receive funding for sidewalk improvements and its system of bikeways if the MPO must also address the needs of towns like Cary and Smithfield.

4. Give the Triangle J Council of Governments authority over land use and transportation development.

If the state legislature and the governor are persuaded by the North Carolina Smart Growth Commission to enact legislation that would require or allow the formation of regional agencies, Triangle J COG could obtain authority over land use and transportation development. The agency would be able to create a smart growth plan and require that localities comply with its land use and transportation development provisions or develop a negotiated process of cross-acceptance (Godschalk 2000). With this structure in place, Triangle J would receive incentives for creating plans, and localities in the region could levy impact fees on new developments, set up tax increment financing districts, or establish transfer of development rights programs.

Modeled after the Portland Metro Council and Twin Cities (Minneapolis-St. Paul) Metropolitan Council, this type of regional body (with supporting state legislation) could coordinate its regional land use plans with the regional transportation system and in effect oversee the Durham and Raleigh MPOs and TTA. The agency would not only be able to achieve the land use and transportation coordination goals lobbied for by the Greater Triangle Regional Council, it could also:

- Establish a regional tax or mandate regional cost-sharing;
- Adopt regional zoning ordinances to establish minimum and maximum development density, mixed land uses, and transit-oriented or traditional neighborhoods;
- Write subdivision and transit-oriented development regulations to require facilities for walking and bicycling;
- Acquire land for public buildings and public right-of-way;
- Review developments of regional impact and plan and site regional public facilities;
- Establish an urban growth boundary; and
- Levy bonds to provide infrastructure in transit corridors or provide tax incentives for businesses to locate near transit corridors or hubs.

The Twin Cities Metro Council mandated that the plans of all 189 cities and towns in the region be consistent with its regional systems plans (Lassar 1991). As a result, it has been credited with guiding 93 percent of development

in the region between 1980 and 1990 to areas designated in its comprehensive plan, saving $1 billion in infrastructure costs (GTRC 1997). Portland used its regional zoning authority to set minimum density targets of four to ten dwelling units per acre for all 27 of its municipalities (Porter 1997). Similarly, King County, WA proposed a measure that would require a minimum of 15,000 jobs to be contained within one-half mile of 14 high-density urban centers in order to support its transit system. Opposition surfaced, however, when projections showed that the transit system would reduce traffic by only two percent (Porter 1994).

Regional authority over land use decisions would most likely come from the state legislature. As shown by the success of the agencies in Portland and the Twin Cities, regional cooperation mandated by state statute may be the most legally and politically feasible way to create an effective growth management program (Porter 1997; Rusk 2000). Though municipalities may resent this top-down approach, a statutory mandate could help counter opposition from local proponents of home rule authority. Thirteen states, including Florida, Georgia and Tennessee, have statewide growth management laws that integrate transportation and land use planning and development (Godschalk 2000). Recommendations of the Smart Growth Commission may persuade Raleigh lawmakers to enact legislation that would allow a regional coordinating body with similar powers to be created in the Triangle.

In California, the Joint Exercise of Powers Act (California Government Code Section 6500-6599.1) allows two or more public agencies to "jointly exercise any power common to the contracting parties." The legislation permits the creation of new government entities and can give regional agencies powers such as the authority to issue revenue bonds to pay for streets, roads, bridges, or mass transit facilities and vehicles (Carlson and King 1998). A similar act of the North Carolina General Assembly could provide these development management tools to a regional government in the Triangle.

Formal regional governance powers are more difficult to establish. Local officials may not be willing to cede a regional group control over decisions that could keep them from implementing some of their own plans. For example, though the review of developments of regional impact (DRI) is required in the Twin Cities and Atlanta, local governments resisted DRI review in Palm Beach County, FL, leading to the demise of the Palm Beach Countywide Regional Council (Porter 1997). When regional governance was proposed in San Francisco, some anti-growth groups perceived that regional authority would undermine their grassroots support. At the same time, proponents of growth thought that taking power away from local governments would reduce the number of sites open for development within the region (Porter 1997). Even within the area covered by the successful Twin Cities Metro Council, 90 percent of localities were opposed to the idea of regional governance when it was first proposed.

Other political obstacles to establishing governments that cover wide geographic areas include the fact that suburban voters traditionally oppose regional governments, as well as federal funding cuts to regional agencies in the early 1980s. Regional governments' power to use land use and transportation management tools may also be impeded by the political climate. For example, municipalities in the Twin Cities region may begin to lobby against tax-sharing if they see excessive revenue losses. And although Portland Metro's home rule powers include taxing authority, the agency has not used the power to date because of the negative public attitude toward taxes (Steele 2000). Opposition to regional authority is found in the Triangle as well. Steve Ford, staff writer for *The Raleigh News and Observer*, commented, "Our counties, and in some cases towns within those counties, are still too competitive and jealous of local prerogatives to agree to cede real power to a regional body" (Ford 1999). Regional bodies are perceived by residents and localities to have a more difficult time providing information to, and addressing the concerns of, individual citizens than local governments (Pincetl 1994; Porter 1997).

Yet, when development and infrastructure are planned poorly and the public perceives a

crisis, regional governance becomes more politically feasible. Environmental protection and local growth regulation are now high-profile issues in metropolitan areas. Because of traffic congestion, automobile pollution, and a projected $10 billion funding shortfall for new freeways, secondary roads, mass transit, high occupancy vehicle lanes, and pedestrian and bicycle facilities over the next 25 to 50 years (Stradling 2000), many Triangle residents and business leaders, as well as the mayors of Cary, Chapel Hill and Durham, support a regional tax for transportation improvements. Though a majority of the members of the Raleigh Chamber of Commerce do not support increased taxes, the leaders of the Chamber would support new local taxes that could help relieve traffic (Stradling 2000). Precedent for regional taxation in the Triangle was set when TTA established a five percent tax on car rentals in Durham, Orange and Wake Counties in 1997 that generates $6 million per year. A regional sales tax would allow greater funding of a coordinated, region-wide transportation system (Hyman 2000).

Several other programs have overcome business and citizen concerns. In the New Jersey Pinelands, a transfer of development rights program administered by a regional government has been successful in protecting environmentally sensitive lands while focusing higher-density development in areas with high transportation accessibility (Porter 1997). The Atlanta Regional Commission and Twin Cities Metropolitan Planning Commission use their power to review DRIs to ensure that local projects do not have an adverse impact on the region as a whole (GTRC 1997). Though the public and developers in these regions worried that the development process would be hindered by additional reviews, the new Commission's existence seems to be an effective incentive for developers to think regionally. To date, no projects have been delayed in the Twin Cities (Lassar 1991).

Portland has successfully adopted subdivision guidelines requiring pedestrian and bicycle facilities and the establishment of minimum standards for transportation performance throughout the region (Porter 1997). Finally, the New Jersey Pinelands and Twin Cities have both been able to create tax incentives for businesses to locate near transit hubs (GTRC 1997; Porter 1997). These are some of the tools that would be possible under a regional framework in the Triangle.

5. Levy Regional Sales Tax to be Administered by Triangle J Council of Governments.

If TTA and the two MPOs were contained within Triangle J, the agency could be given the authority to administer a regional sales tax. The Regional Transportation Alliance, a group of business and government leaders organized by the Greater Raleigh Chamber of Commerce, and the mayors of Cary, Chapel Hill and Durham will lobby the state legislature in January 2001 to allow the region to vote on this type of tax. A regional sales tax could help fund transit planning and improvements, such as TTA's Regional Rail Initiative, station area plans, bus shelters, and land acquisition in transit corridors. It could also provide funding for highway, sidewalk and bicycle system construction and maintenance throughout the Triangle region.

The RTA has also given its support to GTRC's efforts to establish a regional land use strategy and transportation initiatives. Policies backed by the RTA include merging the Durham and Raleigh MPOs, implementing TTA's Regional Rail Initiative, and encouraging the state to allow the region and localities to increase transit funding through a regional 5-cent gas tax or local sales tax. According to the Institute for Transportation Research and Education at North Carolina State University, sales taxes could raise $65 million annually for the region (Paik 1999).

The local sales tax initiative follows the model of Charlotte/Mecklenburg County, where legislation allowed the region's voters to approve a sales tax that raises $1 million per week for mass transit (Hyman 2000). A regional body with taxing authority in the Triangle would provide the region with more transit funding than is currently available for the entire state (the legislature has capped NC DOT statewide transit funding at $5 million annually). The tax would also allow residents of Chapel Hill and

Cary to help pay for roads that they use when visiting Durham and Raleigh.

Yet, the feasibility of taxation remains in question. While leaders of the Raleigh Chamber of Commerce support the 0.5 percent tax, they have stopped promoting it aggressively because only 37 percent of the Chamber's 5000 members support the tax (Stradling 2000). The region may look to the Twin Cities for an example of a regional tax-sharing program. As a result of this Metro Council initiative, 40 percent of the commercial and industrial tax base of each municipality goes to a regional pool of funds, which helps subsidize infrastructure costs for poorer municipalities. Without the tax-sharing program, the per capita tax disparity would have been 50:1; with tax-sharing, it was only 12:1 (GTRC 1997).

The mayors of Cary, Chapel Hill and Durham also support a region-wide, multi-modal transportation plan. According to *The Chapel Hill News*, "current planning activity is focused either on a single part of the Triangle, the separate Capitol and Durham-Chapel Hill planning organizations, or on distinct modes of transportation... Nowhere is there in place a region-wide, multi-modal transportation plan. That's what the mayors want" (*The Chapel Hill News*, 7/12/00).

Further Support for Regional Solutions

Public support for regional governments is often easier to come by if the organization created focuses on a concrete, narrow regional goal, such as water quality protection, transit provision, or park system management (Belldassare, *et al.* 1996; Porter 1997). For instance, many Triangle residents perceive that traffic congestion and air pollution reduce the quality of life and viability of businesses in the region (Hicks 1995; Ford 1999; Dyer and Feagans 2000). In 1993, columnist Neal Price cited "longer commuting times, pockets of ugly and mounting traffic congestion, and air pollution high enough to trigger ozone alert days" as negative results of the Triangle's fragmented leadership (Warrick 1993). These problems have helped build support for the recent regional development management strategy proposals of the GTRC, RTA, and the mayors of Cary, Chapel Hill and Durham. Yet, further support for regional cooperation may not be generated if planners and policy-makers at Triangle J COG, TTA, the Durham and Raleigh MPOs, and local and county governments do not connect what Triangle residents consider critical issues to the inefficient results of local land use authority and regional transportation control.

Between 1950 and 1990, the urbanized population of the Triangle grew less than 300 percent, while the total urbanized area grew by 900 percent (Whisnant 2000). Connecting the local land use decisions that have fostered this lower-density, non-contiguous growth to the regional problems of traffic congestion and automobile pollution can help rally public support for cooperative regional solutions. For example, planners can present concrete data, such as the number of extra automobile trips that are needed for residents of Apex or Hillsborough living in neighborhoods that are not served by public transit or are not within walking distance of commercial centers. In addition, planners can provide information about how much work and family time is lost to commuting when a residence is located five, ten or twenty miles from an employment center. They can also explain how much additional carbon monoxide, hydrocarbon or ozone pollution is created by these trips. Summing emissions increases, additional commuting expenses, decreases in transit ridership, losses of exercise, and time lost over the entire region can be used as a powerful example of the public costs generated by uncoordinated transportation decisions.

Between 1990 and 2020, the population of the Triangle is projected to increase 76 percent, from 700,000 to 1,230,000 (Eisenstadt and Hoar 1995). This growth will be accommodated more efficiently if land use and transportation systems are coordinated over the entire region. If a regional body is dedicated specifically to address issues of traffic congestion and automobile pollution in the Triangle, it may build credibility through small successes. With this credibility, it may be able to obtain broader powers to coordinate land use and transportation development.

Summary

Evidence from other parts of the country reveals the strengths and weaknesses of multi-jurisdictional cooperation and suggests keys to success for regional coordination of land use and transportation development. Evaluating the effectiveness and feasibility of alternative institutional frameworks in the Triangle region demonstrates that land use and transportation coordination could be improved by adopting alternative government arrangements. This paper recommends five specific institutional changes in order to achieve regional gains: 1) merge the Raleigh and Durham MPOs; 2) require mandatory membership in the Triangle J Council of Governments; 3) establish a Land Use Division within the Triangle Transit Authority with power over land use decisions near transit corridors and stations; 4) give the Triangle J Council of Governments authority over land use and transportation development; and 5) levy a regional sales tax to be administered by Triangle J COG.

Sandy Ogburn suggests that the Triangle has made progress toward taking this kind of regional view. The Triangle hosted a World Class Region Conference in 1987, which eventually inspired the creation of TTA and GTRC. Within the past five years, there has been renewed interest in regional planning strategies. "Right now the mayors are interested and the business community is interested," says Ogburn. But significant shifts in attitudes still must be made: "Although the rest of the world views us as a region, individually we do not view ourselves as a region. Not working as a region impedes sitting at the table and working through problems together." Adopting an institutional structure that fosters coordinated land use and transportation systems at the regional level can ensure that the quality of life in the Triangle region remains as high as it was when Sandy Ogburn first moved here 25 years ago.

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Statewide Inclusionary Land Use Laws and Suburban Exclusion

Spencer M. Cowan

There is little, if any, dispute over the need for more low- or moderately-priced[1] housing, nor is there much disagreement that the shortage of such housing is more severe in newer suburbs than in central cities and older, inner-ring suburbs. One way of addressing those situations is through inclusionary land use rules that make the production of lower-priced housing an integral part of residential and/or commercial development. These rules are intended to increase the supply of low-priced housing and reduce its increasing concentration in existing areas of poverty.

All inclusionary programs present a trade-off for the developer. For projects subject to the inclusionary rules, the developer bears the burden of providing some affordable units (inclusionary units) as a condition for receiving development permits. In return, the developer receives benefits to offset that burden.[2] These benefits almost always will include a density bonus; that is, the developer will be allowed to build more units (bonus units) than would have been allowed in the absence of the inclusionary rules. The bonus units can then be sold or rented at market prices. In addition, the inclusionary rules may allow or mandate other cost saving incentives to help defray the additional expense of providing the inclusionary units (Smith et al. 1996; Mallach 1984). The intended result is an increase in the supply of lower-priced housing,[3] financed mostly by the added profit generated by the bonus units (Dietderich 1996). In theory, no direct public funding is required.[4]

Inclusionary rules may be adopted by an individual municipality[5] as local regulations (locally-adopted),[6] or they may be enacted at the state level[7] as part of the general laws and state regulations (statewide).[8] Some statewide plans specify the essential program elements (state-designed),[9] while others require municipalities to accommodate housing for lower-income families but let local government determine the operating details of the program to accomplish that goal (locally-designed).[10] Some municipalities in states with statewide programs have also adopted their own local plans with provisions different from, but not inconsistent with, the state's;[11] statewide and locally-adopted plans are not mutually exclusive.

This article will discuss: 1) the beliefs underlying statewide inclusionary programs, to show which aspects of the problem of suburban exclusion they are trying to address, and 2) the characteristics of five existing statewide programs, to highlight the similarities and differences among them. While statewide, the programs in California and New Jersey are locally-designed and exhibit many of the same operational elements as locally-adopted plans, such as the one in Montgomery County, Maryland. The programs in Connecticut, Massachusetts and Rhode Island are all state-

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designed and offer a distinctly different approach.

Suburban Exclusion and Statewide Plans

The essential difference between statewide and locally-adopted inclusionary plans is in the basic theory underlying the two classes of programs. Locally-adopted programs are based on the premise that the scarcity of affordable housing in a community is due to the unwillingness of developers to produce such housing. Therefore, municipalities must compel developers to build affordable units as a condition of getting approvals for the larger project. Statewide programs, on the other hand, are based on the theory that the scarcity of lower-priced housing is, at least partially, the deliberate and/or inadvertent result of local land use and development regulations. Lower-priced housing is being excluded (Dietderich 1996; Davidoff et al. 1971). Therefore, the state must either prevent municipalities from using their power to exclude, or compel them to accept some affordable housing through regional or statewide allocation.

The connection between local land use ordinances and exclusion is a widely-noted phenomenon (Pendall 2000; Farley et al. 1993), and the reasons offered to explain why that may be so are also numerous. Rolleston (1987) finds three reasons why municipalities adopt the kinds of land use regulations that they do: fiscal concerns, reduction of negative externalities and discrimination. The first two are consistent with arguments that suburban exclusion may be an unintended side-effect of legitimate local actions to address community concerns (Mueller 1989; Fischel 1985). All three are consistent with explanations of why local government might, affirmatively, want to exclude the poor (Dietderich 1996; Briffault 1990).

The fiscal concerns are based on the desire of local officials to provide the highest possible level of local services at the lowest cost to residents. Since most municipal revenue is from local property taxes, this objective may be accomplished by permitting only those units that will contribute more than their ratable share of property taxes for the existing level of services (Mueller 1989; Tiebout 1956). That means that, rationally, local government should only permit relatively more expensive residential development, excluding the poor who probably will require more in locally-funded services than they pay in property taxes.

Two commonly identified negative externalities of development that local regulations seek to prevent are traffic congestion and decreasing property values of existing housing (Dietderich 1996; Rolleston 1987). Both are associated, whether justifiably or not, with the increased density and multi-family units that may be necessary to produce lower-priced units (Pozdena 1987; Ellickson 1981). Local government can, therefore, rationally conclude that more widely scattered, single-family housing will help avoid those negative externalities and zone accordingly.[12] Because large-lot single-family housing is relatively expensive to produce, the poor are excluded.

A community that wants to exclude minorities and the poor or that does not want affordable housing built within its jurisdiction can, easily and with legally sufficient reasons, adopt zoning and subdivision regulations that make the development of affordable housing economically impossible (Dietderich 1996; Davidoff et al. 1971; Babcock 1966). Although *Buchanan v. Warley*[13] prevents local government from explicitly discriminating based on race, local government is allowed to discriminate based on wealth,[14] and, given the correlation between wealth and race in this country, that achieves substantially the same end result. Under the guise of protecting the general welfare or preserving property values,[15] a municipality can limit new housing to single-family units on large lots. It can impose infrastructure requirements that drive the cost of subdivision out of the range of affordability. It can, through hurdles and delays in the permitting process, make it clear to prospective developers that they will not gain approval, within time and cost parameters that allow any chance of financial viability, for projects seeking to create lower-priced housing (Luger et al. 1997; NIMBY Report 1991). Because all of these local government actions drive up the price of housing, they effectively

keep out the poor and minorities, even if that is not what was intended (Luger et al 1997; Lowry et al. 1990; Johnston et al. 1984; Seidel 1978). If it is what was intended, the law will still accept the proffered reasons as sufficient to justify the local actions.

Statewide inclusionary programs are a direct response to perceived suburban exclusion (108HLR1127 1995; Breagy 1976). In these programs, the state, as sovereign, steps in to limit municipalities' power to exclude and/or compel them to permit some affordable housing. There are two ways that states have done this. In one approach, used in New England, the state has directly limited local power and imposed a complete inclusionary system on its constituent municipalities so that all operate under exactly the same rules. The other approach, used in California and New Jersey, compels municipalities to accept a "fair share" of regional affordable housing needs but gives local governments flexibility in meeting that responsibility. Municipalities are required to plan for their regional allocation of affordable housing, and the state provides for sanctions for failure to comply.[16] That strategy has led to a variety of local tactics, including inclusionary programs. Because each plan is locally-designed, there is substantial variation in the operational details among the various local programs, with many quite similar to the Moderately Priced Dwelling Unit ordinance in Montgomery County, Maryland.

Whether the plan is state- or locally-designed, review and approval of development proposals remains at the local level. The rules for the permitting process may be modified, but local boards still have the responsibility for and power over the initial project approvals (Lohe 2000). The statewide program is not one in which the state takes over local government's role in deciding how development should occur.

Program Participation - Mandatory or Voluntary

One of the most fundamental differences between the two statewide systems is how any given municipality's program determines whether a specific development proposal will be governed by the inclusionary rules. The rules may require developer participation (mandatory program), or developers may be allowed to choose whether to have the inclusionary rules apply (voluntary program).

Most locally-designed plans, including approximately 90% of plans in California, are mandatory (Burchell et al. 1994), although there are exceptions.[17] This may reflect local officials' belief that developer choices are the reason for the shortage of lower-priced housing in their community.[18] The three statewide, state-designed programs in New England are all voluntary. Those programs operate on the premise that local government exclusion is the dominant reason for the scarcity of lower-priced housing in the suburbs and that developers will produce more of it if they are not hindered by local government (Herr 2000; Stockman 1992).

The New Jersey program, as initially created by the state's Supreme Court in *Southern Burlington County NAACP v. Township of Mt. Laurel*[19] (*Mount Laurel I*) and *Southern Burlington County NAACP v. Township of Mt. Laurel*[20] (*Mount Laurel II*), was a voluntary plan. It originated with *Mount Laurel I*, where the Court found that the local government was excluding and ordered it to stop. Eight years later, in *Mount Laurel II*, the Court found that the same township was still "afflicted with a blatantly exclusionary ordinance."[21] At that point, the Court created a "builder's remedy" that allowed developers to seek permits in court for inclusionary development. In response to local governments' complaints about the impact of the builder's remedy, the state legislature created a statewide program, superceding the Court's program, that has allowed municipalities to adopt mandatory inclusionary regulations and avoid the builder's remedy (Burchell et al. 1994; Mandelker 1990).[22]

Mandatory programs typically require a project to be inclusionary if it is over a threshold size. Commonly, that threshold is based upon the number of units in the proposed development, although that is not the only possibility. The program may exempt some types of residential developments, such as projects that create rental units. Commercial development may also be

subject to inclusionary requirements, with the threshold based on the number of square feet, prospective employees, or some other quantifiable basis (Burchell et al. 1994; Mandelker 1990; Mallach 1984; Ellickson 1981).[23]

Voluntary programs induce participation by offering sufficiently large incentives to make development under the inclusionary rules more attractive than under the regulations that would otherwise apply to the project. Instead of determining when a project must be inclusionary, voluntary programs have criteria to establish whether a project or developer may be eligible for those benefits. The rules may require a minimum percentage of affordable units as a condition of participation, and they may restrict eligibility by prohibiting for-profit developers, as is done in Massachusetts[24] and, under some circumstances, in Rhode Island.[25] In addition, the programs all are self-limiting to prevent developers from overwhelming any single municipality with affordable units or excessive density. Projects are not eligible in any municipality that meets statutory threshold criteria, such as having 10 percent or more of its housing stock subsidized.

Basic Program Elements

The basic elements of an inclusionary program establish the *quid pro quo* of the trade. They determine: 1) how many inclusionary units the developer must produce; 2) how much of a density bonus he or she will receive; and 3) other cost-saving incentives that may be included in the bargain as additional compensation for the inclusionary units.

Set-aside Requirement

The first part of the trade the program must specify is the percentage of inclusionary units, or set-aside requirement. The California and New Jersey programs use regional or state authorities to determine regional housing needs and allocate a "fair share" of those to each municipality, which may then impose sufficient set-asides on new development to attain that "fair share." Because the program details are specified locally, the set-aside requirements may vary from one municipality to the next. In California, most of the programs require a set-aside of between 10 and 15 percent of the total number of units in the project, although the actual set-asides range from 5 to 35 percent (Burchell et al. 1994).

The New England voluntary programs establish the set-aside percentage as the condition of eligibility for the density bonuses and other incentives of the program. In Massachusetts, for example, only projects providing 25 to 30 percent affordable units may proceed under the inclusionary rules, while Connecticut requires 20 percent for some classes of projects (Burchell et al. 1994; Stockman 1992).

Density Bonus

Closely linked to the set-aside requirement is the extent of allowable density bonus. The higher the set-aside, the greater the density bonus must be to compensate for the cost of the inclusionary units, all other things being equal.[26]

For mandatory programs, the additional units must adequately compensate the developer for the cost of producing the inclusionary units to avoid two possible negative consequences. If the bonus is not sufficient, the regulations could be found to be a taking, or developers may decide to build where their profits are not so adversely affected (Dietderich 1996; Mandelker 1990; Ellickson 1981). The latter is less of a factor if the inclusionary requirements are regionally uniform because developers will find it harder to move to avoid them and still serve the same target housing market.[27] Most mandatory programs establish the number of bonus units as a function of the number of inclusionary units required, allowing X bonus units for every inclusionary unit (Dietderich 1996).

For voluntary programs, the density bonus has to be enough to make inclusionary development preferable to proceeding under the otherwise applicable rules (Dietderich 1996; Stockman 1992). The three statewide voluntary programs in New England all allow the developer to determine the extent of density bonus necessary to make the project economically viable, considering the set-aside required for program participation.

Only in California do municipalities have the option of not allowing a density bonus. One of the California state laws mandating local inclusionary plans requires communities to "grant density or other bonuses" (Burchell et al. 1994: 159), while another speaks of "'regulatory concessions and incentives'" (Burchell et al. 1994: 159). That statutory language would appear to give communities the option of requiring inclusionary units without permitting bonus units, although other cost saving incentives are then required.

Additional Cost Saving Incentives

Finally, the program may identify additional or alternative cost saving incentives that may be allowed for inclusionary developments. Typically, those include reduced infrastructure, expedited permitting, fee waivers, or other exemptions from locally adopted regulatory requirements, all of which are potentially available under all five statewide programs. Because voluntary plans rely on incentives to induce participation, they are generally more flexible and offer the potential for a wider array of incentives than mandatory plans.

In offering other cost-saving incentives, statewide plans have substantially more flexibility than locally-adopted programs. A locally-adopted plan is limited by the extent of the local government's power. It can only change local rules. The state, however, in adopting a statewide plan, can offer additional incentives in the form of exemption from or specific benefits in state laws or regulations.

Neither California nor New Jersey make significant use of that possibility for the locally-designed mandatory programs adopted by their municipalities. The builder's remedy in New Jersey appears to give substantial benefit to developers, but only, in effect, in communities that do not have COAH-certified housing elements. The California DHCD may withhold discretionary funding from a municipality if its housing element does not comply with state requirements (Burchell et al. 1994; Mandelker 1990). That may not directly save costs for the developer of an inclusionary project, but it may provide him or her with additional leverage in negotiating for local permits.[28]

All three statewide voluntary programs make more extensive use of the ability to provide incentives through changes in state law. One common strategy is to reduce the time, expense and uncertainty in the permitting process, a major concern for developers (Luger et al. 1997). Both Massachusetts and Rhode Island offer inclusionary proposals through a unitary permitting process, eliminating the need for multiple local approvals. In both states, the application goes to the local zoning board, which, by statute, may grant whatever special exemptions or variances from pre-existing local regulations may be necessary for the project to proceed and issue the permit.[29] This saves developers the time and expense of appearing before several different town boards and reduces the opportunity for opponents to delay the project with appeals of each separate approval. In addition, Massachusetts specifies an accelerated schedule for hearing and rendering a decision on the initial application for inclusionary proposals, further reducing the time needed. If the board fails to act within the time allowed, either to open the hearing or render a final decision, the permit is automatically granted (Stockman 1992).[30]

Beyond the limited preemption of local regulations through the broad powers granted to the local zoning board in the unitary permitting process, all three statewide voluntary plans provide for a substantially more developer-friendly appeals process. In Massachusetts and Rhode Island, inclusionary developments may take an expedited appeal of unfavorable local decisions to a special administrative agency, the Housing Appeals Commission (HAC) in Massachusetts and the Housing Appeals Board (HAB) in Rhode Island. In Connecticut, the appeal goes to a specially designated court on an expedited calendar. In all three New England states, the municipality has the burden of proving on appeal that its decision was justified. This is a reversal of the ordinary situation, in which local decisions are accorded a presumption of validity,[31] and the developer would have to prove that there was not "rational or reasonable basis" for the decision, that it was "clearly erroneous,"

or that it was "arbitrary and capricious."[32] Municipalities are more limited in the reasons they may use to sustain an unfavorable decision on appeal than those that would generally apply to local regulatory decisions. While the exact statutory language varies among the three states, the common element is that protecting the "general welfare" is not sufficient. To sustain an adverse local decision, in both Connecticut and Massachusetts, the appellate board must find that the public interests justifying the decision outweigh the need for affordable housing. In Rhode Island, the board must find that the decision was "both 'reasonable' and 'consistent with local needs' as expressed in the locality's comprehensive plan and zoning requirements" (Burchell et al. 1994: 146).

The impact of these changes is to increase the developer's chances of getting local approval or prevailing on appeal of an unfavorable local decision. In Massachusetts, between 1969 and 1986-7, there were 458 applications under the state's inclusionary program. Of those, 238 were granted without conditions, 89 with conditions and 131 denied at the local level. Of the 220 applications not granted unconditional approval, 200 appealed to the HAC. Of those, 20 dropped the appeal before the HAC could render its decision, leaving 180 applications. The HAC upheld the local denial in only 10 of those cases. In 70 cases, the board reversed the local decision, and in 100 the parties settled and the permit was issued as agreed. Therefore, of the original 458 applications to build affordable housing, 408 received permits, and the developers who pursued their appeals to a decision by the HAC received a permit in 170 of 180 cases (Burchell et al. 1994; Stockman 1992).[33] In Connecticut, as of the end of 1998, there had been 36 court cases filed involving 28 developments resolved on the merits of the case. The applicant prevailed in 28 of those cases involving 21 developments. In addition, courts rejected 4 cases in which an abutter appealed a local approval (Hollister 1999).

Finally, the Massachusetts and Rhode Island laws provide for a "builder's remedy," allowing the appellate authority to actually issue the permit. This saves the developer the time and expense of going back in front of the same local authorities who rendered the initially unfavorable decision. It also deprives those authorities of the opportunity to reopen negotiations after losing the appeal.

Other Program Elements

Price/Rent Ceiling

Programs, both mandatory and voluntary, usually specify the target price or rent for the inclusionary units.[34] All five programs set the price level based on income. In California, the state compels municipalities to plan, through the required housing element, for the needs of households from very-low- through moderate-income. Locally-designed plans vary from targeting very-low- and low-income households only, all the way to including moderate-income units. New Jersey allocates the "fair share" of the regional needs of very-low- and low-income households to each municipality, though the local inclusionary regulations adopted to satisfy that allocated share may include higher incomes as well (Wish et al. 1997; Burchell et al. 1994). Connecticut only allows low-income housing to qualify for its program, while Massachusetts and Rhode Island include moderate-income households in their programs (Stockman 1992).

Affordability Covenants

Neither of the statewide mandatory programs sets a specific limit on the length of time that the inclusionary units must remain affordable. One complaint about the earliest local programs in California was that the units only had to remain affordable for one year, after which they could be sold at fair market value (Ellickson 1981). However, since the system requires each municipality to provide its "fair share" of affordable housing, it is in the municipality's interest to ensure that the units contribute for as long as possible, with restrictions lasting from five years to perpetuity (Burchell et al. 1994).

Two of the statewide voluntary programs do require that the inclusionary units remain affordable for a minimum period of time, at least in some cases. In Rhode Island, inclusionary units in developments by for-profits must remain

affordable for at least 30 years. There are no time limits on units in projects by government agencies or non-profit organizations. Connecticut requires a minimum 20-year restriction (Burchell et al. 1994). Massachusetts imposes no time limit within its program but limits participation to government agencies, non-profits and limited dividend corporations, reducing the probability that the developer will be unwilling to negotiate substantial affordability protection as part of the permit.

In addition to any internal requirements in either kind of inclusionary program, there may be additional or more stringent affordability restrictions imposed by external funding sources. For example, some inclusionary projects in Massachusetts receive tax-exempt bond financing through state programs to increase the supply of rental housing.[35] That program requires that 40 percent of the units be affordable by households with incomes less than 60 percent of median, or that 20 percent be affordable by households with incomes less than 50 percent of median, and they must remain affordable for a minimum of 15 years (Stockman 1992).

Clustering, Off-site, Out-of-town, and Payments In Lieu

Inclusionary developments under four of the statewide plans are not necessarily required to integrate the inclusionary units into the larger project. Developers may be allowed to cluster those units in one area, creating a small section of affordable units separated from the more expensive market portion of the project. Both California and New Jersey allow locally-designed programs to condone this practice, and neither Connecticut nor Rhode Island prohibit it. Of the state-designed programs, only Massachusetts has regulations against clustering, specifically requiring that the inclusionary units be spread ratably through the project.

Under both the California and New Jersey laws, locally-designed plans may allow the developer to provide the inclusionary units off-site, giving credit for units in other developments. Developers can create one project of exclusively market housing and another, at a different location, with the inclusionary units that would have been required for the market project. All three state-designed plans in New England require that the inclusionary units be built within the same development.

New Jersey goes so far as to permit developers to provide up to half of all required inclusionary units in a different city or town through regional contribution agreements. This allows suburban developers to build inclusionary units in older urban areas to satisfy part of the suburban "fair share" requirement. Some critics have noted that this policy may work against the goal of increasing housing opportunities in the suburbs for lower-income households (Payne 1996).

For locally-designed plans in California and New Jersey, where participation is mandatory, the program may allow some developers, usually for smaller projects or those for which additional density cannot adequately compensate, to make a payment *in lieu* instead of actually producing the inclusionary units. The money is placed in a fund that is then used to finance affordable housing.

Impact of Statewide Inclusionary Programs

One of the most obvious advantages of a statewide inclusionary program is that it can address the problem of exclusion. Reliance on locally-adopted plans cannot. Whether locally- or state-designed, the statewide approach ensures that all municipalities have inclusionary rules. This, in turn, raises the probability that every community will eventually have some affordable units. When Massachusetts adopted its totally voluntary inclusionary program in 1969, only 2 of its 351 cities and towns had 10 percent or more affordable housing. As of May 2000, that had increased to 23 communities (Lohe 2000), with an additional 14 municipalities having 8 percent or more affordable housing.[36] Over 21,000 units were produced under the law as of October 1999 (Krefetz 1999). In 1972, 171 Massachusetts municipalities had no subsidized housing; by 1997, that figure was reduced to 54, with the vast majority of them located in the economically moribund western part of the state (DHCD 1972; DHCD 1997).

A statewide, locally-designed type of program, as used in California and New Jersey, may be preferable to the New England model for two reasons. First, the New England voluntary programs do not plan for the allocation of the low-priced housing. Developers decide where it will be built, without necessarily considering actual local or regional needs. Only on appeal are those needs assessed, and that is against an arbitrary statutory guideline of 10 percent of the housing stock of the local community. The two statewide, locally-designed programs allocate affordable housing to communities based on a "fair share" of regional needs. While some places in New Jersey have questioned their allocation, at least there is some attempt to relate location and need. Second, voluntary plans do not ensure that all communities will have affordable housing. Developers choose, and they may decline to pursue inclusionary projects in extremely hostile locations for fear of reprisal on other, non-inclusionary proposals the developer may be planning. Because the statewide, locally-designed plans rest on a mandate for all communities to accomodate a "fair share" allocation, every municipality will have some affordable housing.

The state-designed voluntary approach, however, also has advantages. Locally-designed plans can be rendered ineffective if there is an imbalance between burdens and incentives, and they are initially dependent on the commitment of local officials for implementation (Herr 2000). Voluntary plans, in which the developer establishes what the balance is, will be as effective as long as inclusionary development can be more economically efficient than the alternative (Dietderich 1996). Because developers implement the program, voluntary programs will require little bureaucracy and are very inexpensive to administer. There is no need for regional authorities to determine the "fair share" allocation, project growth and housing needs, and oversee local plans. There is no requirement to monitor the behavior of local government to ensure compliance. Instead, these functions are left to the developers who initiate inclusionary proposals. The only real expense to the state is providing an appellate body to hear developer complaints.

One area where these programs may fall short of their goals is in actually making affordable housing available to the households and groups that were previously excluded.[37] Wish et al. (1997) note that only 7 percent of households occupying units created in response to the *Mount Laurel* decisions had moved from cities to the suburbs, and 66 percent of those were white. The main beneficiaries of New Jersey's efforts were elderly white women (Wish et al. 1997). In Massachusetts, the law was amended after the state noted that communities were permitting disproportionately high percentages of elderly housing and lower percentages of proposals for family housing. After the amendment, only half of a community's obligation under the law could come from elderly housing (Stockman 1992).

Conclusions

Statewide inclusionary development programs are essential tools in efforts to reduce suburban exclusion. Without them, municipalities that want to keep out the poor will continue to find adequate, legally-defensible means to do so. The poor will be left to find housing in the interstitial non-exclusionary areas where they already are forced to reside. The jobs-housing mismatch will persist. Poverty will remain concentrated; growth will not be smart.

Both types of statewide programs discussed in this article offer promising models, and neither is clearly preferable. Both have characteristics that could be profitably incorporated into the other. They demonstrate the program elements that must be addressed in the design of any inclusionary program, statewide or locally-adopted, and the range of possible choices for each of those elements. Five states have shown what can be done. After careful consideration of the options, an effective program can be created that will reduce exclusion, open up housing options for the poor, and still protect the interests of local communities.

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Notes

1 I use "low- or moderately-priced" rather than "affordable" initially to avoid confusion. The latter is commonly used as a term-of-art to denote units priced to be affordable by households at specific income levels, with housing cost not to exceed a set percentage of that income, based upon market conditions. In this article, "affordable" will be used in the generic sense: housing that is relatively moderately priced.

2 If the developer were not given some benefits, the inclusionary program might be found a "taking" if challenged (Mandelker et al., 1990; Schwartz et al., 1983).

3 Ellickson (1981), however, contends that inclusionary regulations will reduce the supply of affordable housing.

4 That is not to imply that public funds will never be involved in an inclusionary project. The developer may qualify for subsidies under either federal or state housing programs, and so may prospective purchasers or renters of the inclusionary units. For example, the project may use Low Income Housing Tax Credits as part of the financing package, and inclusionary unit purchasers may receive below-market financing from the state. There is nothing in any inclusionary program that precludes government funding; it simply is not a required part of inclusionary development.

5 As used in this article, "municipality" will refer to both incorporated local governments (such as cities, towns, villages, boroughs, etc.) and counties.

6 Local government can only exercise power delegated to it by the state, and so whether any community can actually adopt an inclusionary ordinance is a matter of state law. In some states, such as Maryland, local governments have such authority, which is why Montgomery County could create its Moderately Priced Dwelling Unit ordinance. In other states, like North Carolina, whether local government has that authority is unclear.

7 States do not have unlimited power, particularly if there is a "home rule" provision in the state constitution. When Massachusetts first adopted its inclusionary law, its right to do so was challenged as an infringement of local governments' rights under the Commonwealth's home rule amendment. The claim was rejected, however, in *Board of Appeals v. Housing Appeals Committee in Department of Community*

Affairs, 363 Mass 339, 294 NE2d 393 (1973).

[8] Statewide programs, as used in this article, are those adopted by state government with some affirmative requirement for local action or limitation on pre-existing local power. This definition includes the laws in California, Connecticut, Massachusetts, New Hampshire, New Jersey, and Rhode Island. Not included as "statewide" programs are those state laws authorizing, but not requiring, local government to adopt inclusionary regulations, as in Maryland.

[9] In Connecticut, Public Acts 89-311, codified as Connecticut General Statutes, §8-30g. In Massachusetts, Chapter 774 of the Acts of 1969, codified as Massachusetts General Laws, Chapter 40B, §§ 20-23. In Rhode Island, Public Laws of 1991, Chapter 154, §1, codified as Rhode Island General Statutes 45-54-1 *et seq.*

[10] In California, there are several provisions of state law that apply. In New Jersey, New Jersey Statutes 52:27D-301 *et seq.*

[11] For example, Nantucket, Massachusetts, has a mandatory inclusionary requirement for all commercial developments of over 4,000 square feet enclosed space.

[12] In fact, the right to prohibit multi-family units from being built in the same neighborhood as single-family houses was fundamental to the original sanctioning of zoning by the Supreme Court of the United States in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Justice Sutherland, in his majority opinion, wrote: "With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections very often the apartment house is a mere parasite, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district." (*Euclid v. Ambler*, 272 U.S. 365, 394 (1926)).

[13] 245 U.S. 60 (1917).

[14] Local regulations can't exclude minorities, of course, since the Supreme Court ruled that local ordinances that exclude based on race were unconstitutional in *Buchanan v. Warley*. However, the Supreme Court has, through its decisions, left any judicial remedy for economically exclusionary zoning to the states. In *James v. Valtierra*, 402 U.S. 137 (1971), the Court refused to grant privileged status to the poor as it had in poll tax and criminal laws cases, and it found a law requiring a referendum for approval of all affordable housing to be race-neutral. In *Warth v. Seldin*, 422 U.S. 490 (1975), the Court denied relief sought by outsiders (residents, developers and non-profits) seeking to challenge exclusionary practices of another jurisdiction on the basis that the plaintiffs failed to show specific injury from the defendant town's actions. Finally, in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977), the Court ruled that disproportionate impact is not sufficient to invalidate zoning decisions; there must be evidence of intentional discrimination to amount to a violation of equal protection. These cases left matters largely to the states unless there was clear evidence of racially discriminatory motives. At the state level, the law may be different, and discrimination based on wealth may be prohibited. Courts in some states have limited the impact of exclusionary regulations by finding state constitutional or statutory limitations that impose obligations to consider regional housing needs in local regulations and decision making. See *Southern Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d 713 (N.J.) appeal dismissed & cert. denied, 423 U.S. 808 (1975) (*Mount Laurel I*) and *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92 N.J. 158, 456 A.2d 390 (1983) (*Mount Laurel II*), which established the rule in New Jersey. *Beck v. Town of Raymond*, 118 NH 793, 394 A2d 847 (1978), and *Britton v. Town of Chester*, 134 NH 434, 595 A2d 930 (1991), did the same in New Hampshire. Other decisions have looked to regional considerations when examining zoning in New York, Pennsylvania and California.

[15] North Carolina allows cities to adopt zoning regulations "[f]or the purpose of promoting health, safety, morals or the general welfare of the community," N.C.G.L. §160A-381. "The regulations shall be made...with a view to conserving the value of buildings..." N.C.G.L. §160A-383. Counties have the same authority under §153A-340 and §153A-341.

[16] In California, the state Department of Housing and Community Development reviews the local housing elements and may withhold discretionary funding from municipalities whose housing elements do not comply with state requirements. In New Jersey, communities whose housing elements are not certified by the Council on Affordable Housing (COAH), the

administrative agency established as part of the legislative reaction to the *Mount Laurel* decisions, are exposed to potential builder's remedy lawsuits in state court.

17 One voluntary plan is in Orange County, California. Originally, the county had a mandatory plan, but it changed. The county has been one of the most successful in the state at producing affordable units, with over 6,400 of the statewide total of 20,000 units. Most of the Orange County units were produced under the mandatory program (Burchell et al. 1994).

18 They may, very well, also recognize that their own actions may have contributed to the problem. There is no evidence to indicate that the local preference for mandatory programs is an attempt to deny any responsibility for the shortage of affordable housing in the community. It may be an honest effort to address the possibility that both governmental and private sector decisions have played a role in the creation of exclusionary suburbs.

19 336 A.2d 713 (N.J.) appeal dismissed & cert. denied, 423 U.S. 808 (1975).

20 92 N.J. 158, 456 A.2d 390 (1983).

21 *Southern Burlington County NAACP v. Township of Mt. Laurel*, 92 N.J. 158, 198, (1983).

22 To avoid the builder's remedy, a community had to adopt a housing element that presented a reasonable prospect of meeting its "fair share" obligation. That plan had to be certified by COAH. Upon certification by COAH, the community would receive a six year exemption from builder's remedy lawsuits. Some New Jersey municipalities have not sought certification, and so the builder's remedy remains possible in those jurisdictions.

23 California, with its variety of locally-designed programs, offers examples of these criteria.

24 Under the Massachusetts law, only government agencies, non-profits and limited dividend corporations are eligible.

25 Under the Rhode Island law, for-profits may qualify if the project is for rental housing and the inclusionary units will remain affordable for at least 30 years.

26 Other program requirements may affect the extent of density bonus needed to compensate the developer. For example, the lower the allowable price of the inclusionary units, relative to their cost of production, the greater the compensation needed.

27 For example, with a strictly local plan, the developer only has to move to the next town. With a uniform statewide plan, he or she would have to move to another state. In the latter situation, the developer obviously would less likely serve the same housing market as he or she would in a move from one town to the next.

28 Wheeler (1990) describes the local permitting process as negotiation. The threat of the possible loss of state funding could be one factor a developer could use to convince the local permit granting authority that the municipality would be better off allowing the inclusionary project than not.

29 For example, without the unitary permitting process, a developer might have to submit one application to rezone the property from single-family to multi-family, increase allowable density, reduce frontage and setback requirements, and increase maximum floor area ratio to conform with the proposal. He or she might need separate approval to subdivide the parcel into multiple building lots once it is rezoned. Then he or she might need a certificate of compliance from the local conservation commission, a certificate of adequate public facilities from the traffic safety committee, etc.

30 In practice, there are techniques local boards can use to slow permitting, but the process is still faster than having to obtain multiple permits (Stockman, 1992).

31 A legal doctrine which allows courts to presume that local actions are valid and requires a party challenging to prove that they were not.

32 The "rational/reasonable basis," "clearly erroneous," and "arbitrary and capricious" language is commonly used as the standard of review in decisions on appeals of local government actions. There are other bases upon which a local decision could be overturned, including lack of procedural due process. The regulation upon which the decision is based may have been beyond the authority of the municipality to adopt. The standards cited are those applicable to challenges to a procedurally proper decision based upon a statutorily sound local regulation.

33 It should be noted that 70 of the pro-developer HAC decisions were without conditions. That means that the permits were granted as originally requested by the developer, without conditions to which he or she might have agreed had the local government negotiated a permit acceptable to the developer.

34 One reason why I do not consider Oregon's growth management system inclusionary is

because it does not limit the price or rent of any units.

[35] The program is called the Tax Exempt Loans to Encourage Rental Housing (TELLER). The Commonwealth has other programs with other requirements, both for rental and ownership units.

[36] That figure is based on my analysis of data from Massachusetts DHCD, MHFA and other sources.

[37] The goals for the *Mount Laurel* decisions and subsequent legislation creating COAH were: "To provide housing opportunities in the suburbs for poor urban residents who had been excluded by past suburban zoning practices. To ameliorate racial and ethnic residential segregation by enabling blacks and Latinos to move from the heavily minority urban areas to white suburbs" (Wish et al. 1997: 1276).

Local Inclusionary Housing Programs and the Prospects for North Carolina

Lanier Blum

Many of the nation's rapidly growing communities are confronting an ironic paradox—the stronger the local economy, the more acute the shortage of affordable housing.[1] This is certainly true of North Carolina's metropolitan areas. Generations of public investments in highways, schools, community facilities and services, universities, research, industrial recruitment, and hospitals have created a great deal of the value of urban/suburban land and generated tremendous wealth and rapid growth in this state's metropolitan areas. But every year, more of the people who keep these services and institutions operating cannot afford to live near their jobs. Moreover, in rapidly growing communities like the Triangle, powerful market incentives encourage builders to produce high-cost homes. The combination of regulatory, public investment, and market factors has resulted in a dramatically expanding affordability gap for households with low- and moderate-incomes. What can local governments do to encourage the development of lower cost homes throughout these growing communities in North Carolina?

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The Housing Affordability Gap in North Carolina's Rapidly Growing Communities

The 1990 Census indicated that 38 percent of the renters in North Carolina and 20 percent of homeowners were inadequately housed for the following reasons: they could not afford a safe and suitable house; they lived in overcrowded homes; or their homes lacked minimum plumbing facilities. If the same proportions of households are inadequately housed today, we can conservatively estimate that 334,800 renters and 186,000 home owners — a total of 520,800 households — cannot afford a safe, suitable home.[2]

Unfortunately this estimate of families in need is very likely low because the affordability gap widened during this decade. Inflation-adjusted incomes of North Carolina households in the bottom two fifths of the income range have not increased since 1990, and incomes in the middle fifth grew by only one half of one percent annually.[3] Even in an affluent and rapidly growing area like the Triangle, the number of jobs that pay low wages grew faster than jobs paying high wages.[4] At the same time, in the metropolitan markets where 78 percent of North Carolinians live, existing housing cost data indicate that rents and home prices have risen dramatically, often by over 80 percent.[5]

This widening housing affordability gap necessitates a change in North Carolina legislation to enable local inclusionary housing programs that accommodate the growing need for affordable housing in North Carolina.

Local Inclusionary Housing Programs

Local inclusionary programs are based on a requirement in a community's development ordinance that new residential developments

(usually of more than a specified size) include some homes with moderate sales prices or rents. To compensate builders and apartment owners for the lower price of these homes, these developments are allowed higher housing densities.

Some communities also offer priority for processing and/or preference in granting building permits, fee reimbursement for permit processing or community facilities, or lower-cost site improvement standards. For example, in transit service areas, reduced parking requirements are granted. To make homes more affordable and create longer-term rental affordability, local and state governments often subsidize or purchase some of the affordable homes. Otherwise, deed restrictions usually record the terms of affordability. More specifically, local development ordinances typically incorporate provisions that describe:

- *How and when the requirement for affordable homes applies.* At least 10 to 25 percent of new homes must typically be affordable. Usually, residential developments that are larger than between 10 and 50 homes must include some that are affordable. Small projects are often excluded to encourage infill development.
- *The extent of the density bonus.* In most North Carolina communities, the bonus can be designed to fully compensate or even reward the developer. In areas with extremely high land costs (higher than in this region), or where additional density is not feasible (because of environmental or political factors), this may not be possible. As a result, the community may have to add subsidies to compensate builders.
- *The target income of inclusionary home renters or buyers.* Sales are usually required to be affordable to households with a maximum 80 percent of the area median income and rents affordable to households with up to 50 percent. Some programs require fewer affordable units to be sold or rented at costs well below market.
- *Design, site and construction standards.* Inclusionary programs work best and homes sell most readily when the affordable homes look similar to the higher price homes.
- *A system for marketing the homes and selecting, qualifying and preparing buyers or renters.*
- *Local government or housing authority rights to purchase some lower priced homes.*

The Benefits of Local Inclusionary Housing Programs

Inclusionary programs are designed to generate two main benefits. First, inclusionary programs can significantly increase the supply of homes affordable to families with incomes of 40 to 80 percent of the household median. The potential impact of these programs can be particularly significant in rapidly growing communities. For example, if Raleigh's development ordinance had required developers to allocate 10 percent of the units in new developments of over 50 homes, in 1999 alone, builders would have constructed more than 550 affordable homes with a value of over $40 million. If 10 percent of North Carolina homes built in the 1990s were moderately priced, nearly 24,000 of the 28,000 households that are now paying more than 50 percent of their income for housing could have found homes near their jobs that fit their budgets.

The second benefit of inclusionary programs is that they disperse affordable housing throughout new developments in an area. Dispersing affordable housing means that poverty is not so concentrated in schools and neighborhoods. Often this can also translate to shorter commutes for low-income workers. Furthermore, if compatibly designed, moderately priced homes are a ubiquitous component of every new neighborhood, and resistance to affordable housing may diminish.

The Nation's Model for Success

During the past two decades, Montgomery County, Maryland, developed one of the highest-producing inclusionary housing programs in the United States. It has been described as "the nation's most innovative housing program," in *Governing* Magazine, and by David Rusk as "the nation's model for success in replacing exclusionary zoning with inclusionary zoning."[6] Montgomery County's zoning ordinance requires that 12 to 15 percent of nearly every new development of over 50 homes be moderately priced homes.[7]

Since 1975, builders in Montgomery County have produced over 10,300 moderately priced homes, an average of over 400 homes yearly. Instead of building "projects," Montgomery County's public housing authority purchased 1,600 of these homes throughout the community. These homes are rented to very low-income households and are nearly indistinguishable from their expensive neighbors.

Montgomery County's program has served as a model for neighboring communities. A coalition led by homebuilders in Fairfax County, Virginia, advocated that the state authorize an inclusionary zoning ordinance adopted in 1990. Affordable housing production was slow until 1995, when the County modified its ordinance to more closely mimic Montgomery County's.

Today, with a total population of about one million, Fairfax County has 1,100 moderately priced homes in 100 developments and about 600 more approved for construction. Town homes and condominiums have been sold to owners with incomes below 70 percent of the median income. Two thirds of the apartments are rented to tenants with incomes below 70 percent of median and one third rented to tenants with incomes less that 50 percent of the median income. The Fairfax County housing authority has the right to purchase or lease one third of the moderately priced homes. By 2000, it had purchased 40 homes to rent to very low-income tenants and as group homes for tenants who also receive residence-based support services.

Designing A Local Inclusionary Housing Program

Hundreds of communities across the nation have implemented inclusionary programs, and many more are developing new ones today, providing a wealth of information about how to tailor them to local markets and goals. Many stable and tested inclusionary housing programs work powerfully and enjoy strong support, but others have little or no impact. Local inclusionary housing programs work best in cities or counties where:

- Job growth or community features generate strong housing demand, but market prices are not affordable to low and moderate income households.
- Land costs are high, but land is available and suitable for developing large subdivisions.
- Community facilities (especially wastewater treatment) are available to support urban development density (four units/acre or more).
- The amount and density of residential zoning is consistent with local plans for expansion of community facilities, and new large subdivisions are located in areas that have access to public transportation and jobs.
- Residential density permitted under existing zoning is not already higher than the market will support, and all rezoning will require including affordable housing.
- A local or regional housing department, partner agency or land trust:
  (a) recruits and helps prepare buyers and tenants; and
  (b) purchases or leases moderately-priced homes, then sells or rents them to lower income households and/or extends the term of affordability beyond the required minimum.
- Political leaders strongly support the expansion and dispersion of housing that is affordable to low-wage-earning members of the community.

Inclusionary housing programs have the potential to significantly increase and disperse moderately priced homes throughout new neighborhoods in rapidly growing communities. Because they can be designed to fully compensate developers in most projects, they can help add housing that households with 40 to 80 percent of the median income level can afford without additional assistance. Adding subsidies can expand this program's capacity to work in very expensive places, to reach lower income families, and to keep the housing affordable longer or permanently.

From voices of experience, like Eric Larson, Director of Montgomery County's Moderately-Priced Housing Program, we have learned that the details of program design are critical to the effectiveness of the program. "The success of the Montgomery County program relies on the fact that every development is included. Our design standards have been effective at blending the moderately priced homes in with their neighbors and enhancing marketability. Moderately-priced homes house disproportionately more non-white families, helping to meet the community's goals for desegregation and housing more of the employees of Montgomery County firms."[8]

Dave Flannagan, homebuilder and President of the National Capital Area Builders' Council, advocates, "The Moderately Priced Housing Program is not to be feared. It is a win-win program that should be replicated in other rapidly growing communities."[9] The strength of the program impacts in the Capital area demonstrate why more and more North Carolina localities are asking for explicit state enabling authority to deliver the program here.

The Prospect for Local Inclusionary Housing Programs in North Carolina

Some North Carolina local governments already negotiate for affordable housing as a condition of rezoning. Others have developed creative mechanisms that aim for the same goal through less direct means, such as limiting the size of some homes in each development, and making affordable housing one of the community assets covered in adequate public facility ordinances. Some attorneys advise that North Carolina local governments already have the authority they need, broadly construed, to implement inclusionary programs. However, most attorneys agree that local governments need enabling authority to develop comprehensive and uniformly applicable ordinances. This legislation would also clarify that zoning ordinances and processes, tools that have long been used to exclude affordable housing, can be transformed. With these changes, zoning can be used to include more housing for people with a greater range of incomes to live in the same neighborhoods.

Notes

1. The State of the Cities 2000, US Department of Housing and Urban Development.
2. 1990 Census, updated by Office of State Planning population estimates, with 1990 Census percents of households that rent, own, and have housing needs.
3. NC Budget and Tax Center, March 2000.
4. Caryn Ersnt, Institute of Government web site, unpublished paper.
5. 2001-2005 NC Consolidated Plan.
6. David Rusk, "Overcoming America's Core Problem: Concentrated Poverty," in *Cities in the 21st Century*, Urban Land Institute 2000, and Christopher Swope, "Little House in the Suburbs," *Governing*, April 2000.
7. The only exceptions are several multi-story condominiums, where the density bonus could fully compensate the builder, and where the builder was instead allowed to contribute to a local housing trust fund.
8. Eric Larsen gave this advice in a speech on May 27, 1999 in Research Triangle Park, NC, sponsored by the Triangle J Council of Governments Smart Growth Committee.
9. Videotape filmed in 2000 by the National Capital Area Builders' Council.

The Community Land Trust: Preserving Affordable Housing Stock in Orange County, North Carolina

Sonia Garrison, Christine Westfall, Alison Weiner, and Erin Crossfield

Orange County, North Carolina, located in the state's booming Research Triangle region, is increasingly becoming an area in which only the affluent can afford to live, threatening the economic, racial and cultural diversity that is needed for a healthy society. In response to the county's dwindling supply of affordable housing, area activists and governments together established the Community Land Trust in Orange County (CLTOC), incorporated in 1999. Two years later, CLTOC is now beginning to realize its goal of creating housing that will remain permanently affordable for generations.

The Housing Crisis in Orange County

The economy of the Triangle region is thriving, primarily due to the presence of several universities as well as a large number of research and technology firms. From 1990 to 1997, Orange County experienced population growth of 14.3 percent, with projections for the next decade increasing to 16.4 percent.[1] As a result of the booming population and prosperity of the region, Orange County is faced with a severe lack of affordable housing. Incoming residents have turned the housing market into a seller's market, and the cost of housing has risen dramatically. Many new high-income homes and housing developments are cropping up around the county, and undeveloped land near the town centers is rapidly disappearing.

Home closing prices reflect the unaffordable nature of Orange County's homes. For the eleven months ending November 2000, the average selling price for all homes sold in Orange County was $235,404. The average price for new homes was $272,354.[2] Families would need to earn approximately $85,000 to $100,000 per year to afford sales prices in that range.

Unfortunately, incomes in Orange County are not rising as fast as inflating housing prices. In 1998, families of four that earned the median income in the county ($54,700) were only able to afford 24 percent of the detached homes, and families earning 60 percent of the median income ($32,820 for a family of four) could afford only six percent of the detached homes.[3] In addition to the costs of homeownership, rental costs in the area are also out of reach for many working individuals and families. Rental units are in short supply, in part because more than 15,000 University of North Carolina students live off-campus.[4]

Traditional Solutions

As early as the 1980s, non-profits and citizen activists raised the issue of the diminishing supply of decent and affordable housing with the town and county governments in Orange County (the four governments are Orange County, the Town of Chapel Hill, the Town of Carrboro, and the Town of Hillsborough). In response, the governments used public funds to create

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subsidized, affordable homes to be sold to low- and moderate-income buyers.

These homes were typically built or renovated by non-profit developers in the area. Area governments often subsidized these homes in the form of a no-interest "second mortgage" to the buyer. The second mortgages usually ranged from $10,000 to $25,000, which allowed the homes to be sold to buyers who earned 80 percent or less of the county's median income.

The initial owner of the home was permitted to sell it to whomever he or she wished. However, if the homeowner sold the home to someone who earned more than 80 percent of the median income, the buyer was required to reimburse the second mortgage subsidy to the government. Otherwise, he or she was required to pass the subsidy on ("roll it over") to the next buyer. In either case, sellers were allowed to realize all of the gains from any increases in property value since they bought the home. This system ensured that when the home resold, the public subsidy would either be recaptured by the government or passed on to the next low-income buyer. However, this system did not give sellers any financial incentive to sell to a low-income buyer; sellers would make the same amount of money from the sale whether or not they sold the home to an income-qualified buyer.

In addition, rapid increases in area housing values soon made these homes unaffordable to income-qualified buyers in spite of the second mortgage system. In the latter part of the 1990s, homes in Orange County appreciated at rates in excess of five percent a year, while personal income rose only three percent or less. Hence, if the initial owner of an affordable home resold his or her home in as little as five years, it would often be unaffordable to a low- or moderate-income buyer even if the buyer received the "rolled over" second mortgage subsidy. Many publicly subsidized homes did in fact re-sell unaffordably on the open market in as little as five years after they were built. These homes were then permanently lost as affordable housing stock, and the cost of building new homes to replace them was far greater than the amount of second mortgage subsidy which was recaptured by the government.

The Community Land Trust Model: An Alternative Solution

A land trust is a familiar concept to both planners and lay-people because of its use in land conservation. Conservation land trusts preserve land for community health and enjoyment; they protect fragile ecosystems and wilderness, as well as open space and recreational areas. Community land trusts play a similar role as custodians of land that belongs to the community and are committed to good stewardship of that land. The difference lies in the use of the land; community land trusts usually have a primary mission of holding the land to create and preserve permanently affordable housing for those with low and moderate incomes. According to the Housing and Community Development Act of 1992, a community land trust (CLT) is an organization that:

- acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;
- transfers ownership of any structural improvements located on such leased parcels to the lessees; and
- retains a preemptive option to purchase any such structural improvement at a price determined by a formula that is designed to ensure that the improvement remains affordable to low- and moderate-income families in perpetuity.[5]

Community land trusts sell affordable homes to low- and moderate-income buyers while maintaining the ownership of the land underneath those homes. When a homeowner buys a CLT home, he or she gains title to the improvements and simultaneously enters into a ninety-nine year ground lease for the land. At the end of the lease term, the homeowner (or "Lessee") may renew the lease for another ninety-nine years. This guarantees that the homeowner can live securely on the land, just as if he or she owned it. In addition, the homeowner may bequeath the home to a relative. The lease fee is usually kept low, just enough to cover the property taxes that

CLTs must pay annually on the land as well as some administrative fees.

The ground lease includes provisions that specify the rights and responsibilities of the homeowner as well as the CLT. The most significant provision is the resale formula. The resale formula ensures that when and if the homeowner decides to sell the home, he or she will sell it at a price affordable for buyers in the same income bracket. In addition to the down payment and any equity the homeowner has accrued, he or she realizes some percentage of the total appreciation of the home, depending on how many years he or she lived there before selling it. (Each CLT has a different resale formula, determined by the board of directors, reflecting the economic conditions of the area. The Community Land Trust in Orange County gives homeowners approximately 25 percent of their appreciation.) This formula allows the homeowner to realize some appreciation from his or her investment in the home, but is not enough to remove the house from the affordable housing stock for low- and moderate-income residents. In this way, CLTs try to balance the interests of the community with those of individual homeowners.

When and if the CLT homeowner decides to sell his or her home, it must be sold to an income-qualified buyer, defined as someone who earns less than the percentage of the median income that is specified for that home at a price determined by the resale formula. This ensures that the home remains permanently affordable and is kept in the hands of low- and moderate-income buyers. In addition, CLT homes must be occupied by the their owners and cannot be rented out.

Other than the resale and rental restrictions, CLT homeowners enjoy all of the benefits of traditional homeownership. They can make improvements to their homes and can keep the grounds in the style that suits their tastes and lifestyles. Owners can use the home in any way that is consistent with zoning codes, in the same manner as the owner of any other home can. They can take advantage of the tax benefits offered to all homeowners. Most importantly, because the ground lease has a ninety-nine year term, they can rest assured that they will not be displaced by a landlord and can enjoy the emotional benefits of knowing that their home will be theirs for as long as they want it.

All CLT homeowners are voting members of their CLT. As members, the owners are involved in making key decisions about the actions of the land trust, including voting for the board of directors. Members also have the opportunity to be elected to the CLT board, which implements the decisions of the Trust and oversees the actions of CLT employees. As membership organizations with members drawn from land trust leaseholders and the wider community, CLTs can provide greater local control over land and housing ownership than is commonly experienced by low- and moderate-income community members.

In addition, many CLT homeowners enjoy the support that this type of trust can offer. Because the relationship between the homeowner and the CLT is by definition a long-term one, many CLTs offer their members on-going services such as home repair and budgeting classes. These efforts serve both parties by helping to ensure that the individuals as well as the neighborhoods maintain a high level of stability.

The History of the Community Land Trust in Orange County

In November 1997, the Towns of Chapel Hill and Carrboro formed a task force to establish a community land trust as one tool for effectively creating long-term affordable housing. These two towns had experienced the greatest affordable housing crisis in the county, and both were fast running out of developable land that could be used to build new housing. In the neighboring City of Durham (in Durham County), the then ten-year-old Durham Community Land Trust had successfully created permanently affordable, community-controlled housing and promoted neighborhood revitalization in a low-wealth Durham neighborhood. Inspired by the Durham Community Land Trust, the task force researched community land trust programs nationwide (there are about 120 such programs). As a result of the task force's findings, the governments of Carrboro, Chapel Hill and

Orange County jointly voted to help fund a new community land trust in Orange County.

The aspect of the community land trust model that most interested these governments was the creation of permanently affordable housing. Government staff and officials determined that a community land trust could make the most efficient use of the limited public funding and the remaining land available for affordable housing. Instead of re-creating each affordable housing unit lost to the marketplace with new public funds and land, the community land trust model would allow subsidy money to be invested once, after which it would remain with that unit to keep it affordable permanently.

Mission and Structure of the Community Land Trust in Orange County (CLTOC)

The primary mission of CLTOC is to develop permanently affordable housing for low- and moderate-income people and to promote neighborhood improvement through the equitable and responsible stewardship of land and other community resources. Secondary purposes are to protect the natural environment, promote the ecologically sound use of land and natural resources, and support the long-term health and safety of the community. In addition to low- and moderate-income housing development, CLTOC can also facilitate the creation of special needs housing, group homes and rental housing. Additional goals of CLTOC are to combat neighborhood deterioration caused by absentee ownership and lessen neighborhood tensions that are caused by gentrification and the displacement of low-income people.

CLTOC was designed to be community and resident controlled. Putting partial control of the organization in the hands of the residents ensures that the CLTOC appropriately serves its target populations. CLTOC provides services to people who live or work in Orange County and who earn less than 100 percent of the area median income. Most of CLTOC's projects serve those earning less than 80 percent of the area median income. Community control is attained through the use of a voting membership as well as a board of directors that is made up of community members, government representatives and CLT homeowners. The membership includes all those who own or lease a house through the CLTOC program and community members who are supportive of the community land trust concept. In order to ensure cooperation rather than competition with other local affordable housing developers, one of the positions on the board is reserved for a representative of another non-profit organization that provides housing or other services for low-income people.

Current Projects for CLTOC

CLTOC is constantly in the process of identifying potential future building sites. Once a site is found it must be evaluated; topography, possibilities for access to infrastructure, zoning, environmental status, and land value are examined. If the land is appropriate for housing development and subsidy money is available, CLTOC can make an offer on the land (or the land can be donated). Once the site is acquired, CLTOC must obtain liability insurance on it, pay taxes and insurance, and take care of any necessary maintenance on the property. CLTOC works with developers to build or rehabilitate housing on the land.

While the housing is being developed, CLTOC conducts outreach to the community-at-large and to potential homeowners. It assists future homeowners with arranging the appropriate public and private financing to purchase the homes. CLTOC's work is not finished when the homes have been purchased; it is responsible for paying taxes and insurance on the land, collecting the ground lease fees, working with the homeowners to maintain their homes, and educating the public on community land trusts. When the owner wishes to sell, CLTOC will help the seller arrange for a new buyer and market the home. Currently, CLTOC is developing fourteen town homes on land donated by the Town of Chapel Hill. Ten of the homes are already spoken for, and completion of the project in the spring of 2001 is eagerly anticipated.

A Sticky Issue

The CLTOC program does an effective job of ensuring that homes are always available to

the sector of the population with low- and moderate-incomes. Part of this lowered cost is achieved through the removal of the price of the land from the price of the home. However, even this subsidy would be insufficient to guarantee permanent affordability without restricting the resale price of the home.

This is an important consideration for potential CLTOC home buyers. While CLTOC homes do help people build equity and are a much better financial investment than renting, they are not investment properties that can offer large returns. In the past century, many American families have built wealth by realizing large gains through the appreciation of their homes. Traditional affordable homeownership programs have invested large amounts of money to help a few families benefit from buying their home affordably, then selling it at a much higher price on the open market. By restricting the price at which land trust homes can be re-sold, the community land trust model balances the homeowner's opportunity to build wealth with the community's need for permanently affordable housing.

Is the benefit to one family of realizing full equity on the sale of its home more valuable than the benefit to the community of guaranteeing affordable housing for countless families? This is a particularly important consideration to minorities, who have historically been denied opportunities to create wealth, including the opportunity for land ownership. It is reasonable that some may question the CLT model wherein wealth accumulation is restricted.

Despite these concerns, the Community Land Trust in Orange County shows much promise as a way to both increase and preserve Orange County's stock of affordable housing.

Notes

1. ABODE: Coalition for Housing Diversity in Orange County. 1999. "Who Can Afford to Live in Orange County: An Assessment of Orange County's Housing Stock and Affordability.
2. Triangle Multiple Listing Service Inc., ending 12/01/2000.
3. Knuth, Sharon L. 1999. *Implementation of a Countywide Land Trust in Orange County, NC*. Master's thesis, University of North Carolina at Chapel Hill.
4. Institute of Community Economics internet web page www.iceclt.org , November 24, 2000.
5. Housing and Community Development Act of 1992, amending Section 233 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12773). This definition appeared at H11966 of the Congressional Record, October 15, 1992.

A Disaster Relief and Quality Improvement Loan and Grant Program for Childcare Providers

Dan Broun

In September of 1999, Eastern North Carolina experienced a natural disaster of epic proportions. Flooding as a result of Hurricanes Dennis, Floyd and Irene left entire towns under water. And now, even after the floodwaters have receded, the effects of the disaster are expected to linger for years to come. Unfortunately, it appears that federal funds for disaster relief will not be as much as originally hoped — the total package will only reach $800 million, far from the $1.76 billion which North Carolina elected officials determined was necessary to meet the needs of communities in the East. An example of this shortfall is that an estimated 1,000 to 1,500 flood-affected small businesses and non-profits will not be served by Federal Emergency Management Agency or Small Business Association disaster assistance, which will leave at least a $25 million gap in funding. In addition, the federal relief package failed to include $21 million to address child care needs that the governor of North Carolina originally requested.

Recognizing that child care providers were among the organizations most heavily hit and determining that quality child care is essential to rebuilding efforts, Self-Help, one of the largest community development financial institutions in the nation, has created a grant program supported by the state of North Carolina to finance loans to child care providers impacted by the flooding. The program uses $1.5 million committed from the North Carolina Division of Child Development and $3 million from the North Carolina Partnership for Children to finance the real estate needs of child care providers, a category of assistance that cannot be covered by state funds.

As part of the project, Self-Help, through the Frank Porter Graham Child Development Center at UNC-Chapel Hill, plans to evaluate the program's most unique feature: up to half the state-funded loan can be forgiven if the child care demonstrates quality improvements. This component of the program offers an opportunity to determine whether child care operators will improve the quality of their operations if they are given an incentive such as loan forgiveness. In addition, the evaluation will assist Self-Help in determining which relaxed underwriting criteria impact loan performance of child care providers.

This program, although focusing on child care, has the potential to offer two important lessons for other economic development efforts. First, it represents a comprehensive approach to mitigate the impacts of a disaster. Second, it tests the hypothesis that tying grants or loan forgiveness to quality improvements can make a positive impact.

Background of Self-Help

As a community development financial institution, a major part of Self-Help's goal is to strengthen community resources. This is done through its Community Facilities Fund (CFF). Created in1994, the CFF works with organizations that support families and build

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community infrastructure in low-wealth neighborhoods and rural communities. Since its establishment, the CFF has made $27 million in loans to nonprofits and human service providers. The CFF works in three main areas: children and families; community-based health care; and other non-profits.

The primary way in which CFF works with human service providers is through the provision of loans. Self-Help offers loans to these organizations to acquire or rehabilitate real estate or equipment as well as for working capital. Self-Help also offers bridge loans as a way to see non-profit organizations through the time between when a pledge of support is made and when the funds are received. Self-Help staff also provide significant amounts of technical assistance to borrowers, offering them both pre- and post-loan closing help in facility development financing and operating a sound business operation. Staff from Self-Help travel throughout the United States working with states and community organizations to help them devise effective strategies for working with human service providers.

The Community Facilities Fund is part of an organizational structure at Self-Help that works to provide a "one-stop" shop for financial assistance for its constituents, particularly minorities, women, rural citizens, and low-wealth families. The Center for Community Self-Help, the parent organization of the Self-Help Credit Union and the Self-Help Ventures Fund, was founded in 1980 to help expand economic opportunity for low-income workers in North Carolina, where even today more than 27 percent of full-time workers earn less than $15,000 a year. It soon became evident that Self-Help could best achieve this goal by helping to remove a key barrier to economic opportunity: the lack of access to capital. These key constituencies not only had little or no net worth, but they were seldom able to obtain credit from traditional lenders. Thus, in 1984 the Center's founders created two financing affiliates, the Self-Help Ventures Fund and the Self-Help Credit Union, to begin to make loans to people not served by conventional financial institutions.

Of equal importance, Self-Help offered the non-financial assistance—management help for entrepreneurs, household budget counseling for individuals, and technical advice for nonprofits—that would help borrowers achieve their goals. When Self-Help cannot provide technical assistance in-house, it is able to refer borrowers to a wide range of agencies and organizations that can best meet their needs.

The Self-Help Ventures Fund, a 501(c)3 organization, manages Self-Help's non-traditional loans, such as higher risk commercial loans and low-income mortgage pools. The Self-Help Credit Union is a federally-insured financial institution that makes most of Self-Help's home- and real estate-based commercial loans.

Self-Help's Child Care Lending Program

The Community Facilities Fund began operations through an interest in supporting child care providers. The effort has been extremely successful. To date, Self-Help has made over $15 million in loans to child care providers and created or preserved almost 13,000 child care spaces. Self-Help's loans have assisted a broad spectrum of child care. From the small provider needing a loan to make improvements to become licensed by the state, to a Head Start program wanting to buy and renovate a building in a neighboring town to expand its services, to a provider using a loan to purchase a building to move from an in-home facility to a stand-alone center, Self-Help's assistance has been vital in improving access to child care across North Carolina.

A major part of that effort has been the Child Care Revolving Loan Fund (CCRLF). Under the program, Self-Help receives funding from the state Division of Child Development, which makes possible below-market loans to child care providers. One example of the way in which the CCRLF program works comes from a Self-Help loan made to a child care provider in Winston-Salem, North Carolina.

Self-Help used $20,000 from the state's Child Care Revolving Loan Fund to help an African-American child care operator expand her home-based center to a larger stand-alone

facility. The CCRLF money, loaned at five percent interest, was used to support the working capital needs of the borrower. Because of the federal restrictions on CCRLF funding, Self-Help used its other loan capital to fund the remaining $95,000 needed to purchase a stand-alone facility. This money was loaned out at Self-Help's standard commercial loan rate based on the higher cost of funds. Combined with the CCRLF money, Self-Help was able to help the borrower serve even more children in a high-quality setting.

Creating a Disaster Relief Program

As the full extent of the flooding from the 1999 hurricanes was beginning to be understood, the state Division of Child Development approached Self-Help about expanding CCRLF. The state has invested $1.5 million in Self-Help to finance child care providers affected by the flooding. This emergency fund may be used by child care providers to recover from both physical and economic damage (e.g., business interruption or loss of customers). Specifically, these providers may use the loans to:

- recover physically and economically from the hurricanes and related flooding (renovations, working capital, lost equipment including playground surfacing and other supplies, vehicles);
- expand to fill gaps left by providers who were forced to close; or
- improve quality.

At the request of the Division, Self-Help has agreed to relax the credit requirements to help meet the needs of those centers/homes affected by hurricane floods. However, centers/homes must have been solvent prior to the disaster as part of the qualification requirements and individuals must meet minimum credit history standards. Loans are made available to providers at a five percent interest rate. Approximately $500,000 of the state's grant to Self-Help will be used to cover the forgiven portion of the loans, administrative fees, and potential losses that may occur due to the relaxed underwriting criteria.

Under the state's program, a portion of the loan can be forgiven if the child care provider makes improvements in its program quality. Quality improvement will be measured through the state's new "five-star" quality assessment system. The amount of the loan that will be converted into a grant will be tied directly to the number of stars that the provider has achieved by the fourth year of the loan. Child care providers that maintain a high quality standard are also eligible for loan forgiveness. The eligibility for loan forgiveness will be evaluated at the end of four years from the date of loan origination, or in the event of change of ownership or in prepayment of loan.

Expanding the Program

This program, ambitious as it is, was unable to meet some of the most vital needs of child care providers. Specifically, because the state's funding actually comes through the federal Child Care Development Fund program, money cannot be used to finance any real estate transactions or major renovations of a facility. If this emergency fund is to truly assist North Carolinians in their drive to recover from the flooding, then this funding gap must be closed.

Thus Self-Help proposed to complement the state initiative by making it a comprehensive source of subsidized funding. Working with the North Carolina Partnership for Children, Self-Help was able to secure a $3 million capital grant that allows it to offer the same low five percent interest rate for the real estate needs of child care providers as well as providing this initiative with adequate scale to make it a noteworthy experiment on the quality front. Funds gained through the partnership are not part of the forgiveness program.

Although the precise demand for these loans cannot yet be determined, the effects of the flood suggest that the market and need exists. As is the case with the state's investment, any funds not loaned to flood-affected child care providers would be made available to child care providers in other parts of North Carolina. As the funds are repaid, they will form a permanent loan pool for child care providers across the state.

Evaluating the Program

As a part of this program, Self-Help is working closely with the state to monitor the effect that the loan forgiveness program is having on improving the quality of child care. In addition, it will allow Self-Help to investigate how relaxed underwriting criteria impact the performance of loans to riskier borrowers. Preliminary investigations into other efforts around the country suggest that this program is unique; any lessons learned will be shared with policy makers, community development financial institutions, traditional lenders and governmental agencies across the nation.

The Frank Porter Graham Child Development Center has begun a proposed six-year evaluation of the program that will ask:

- "Does the quality of care in child care centers and family child care homes improve for providers who participate in the loan-forgiveness program? If so, is the quality improvement greater than that for providers who received traditional loans that did not include a loan-forgiveness component?"
- "*How* does the loan-forgiveness program influence (or not) the quality of care over the life of the loan? For example, do providers use the loan to purchase new equipment that increases their star rating? Do providers who participate in the loan-forgiveness program participate in more staff training and development activities than do providers who received traditional loans?"

According to the evaluation plan put forth by Frank Porter Graham, "the first question will be answered by comparing over the life of the loan the star ratings of providers who participate in traditional, non-forgiveness Self-Help loan programs. The second question will be answered by obtaining detailed information about how the loan was spent by providers, what additional funding the providers received, and what quality improvement activities the providers and their staff participated in over the life of the loan."

The Program to Date

Receiving funding in the early part of 2000, Self-Help immediately began to aggressively market the program to child care providers. Loan officers traveled throughout the eastern part of the state holding workshops and offering information about the program. To date, Self-Help has closed ten loans worth over $835,000. These child care providers serve over 800 children. The following is an example of one of the loans Self-Help made.

Step by Step Child Care is located near Princeville, one of the communities hardest hit by hurricane-related flooding. While the child care center itself did not suffer any physical damage, most of its clientele could not get to the center, causing a substantial business interruption. To assist the provider, Self-Help offered a $4,000 loan to provide working capital for the center. The loan will allow the provider make up for much of the revenue shortfall she suffered in the immediate aftermath of the flood. Governor Jim Hunt visited the center recently as part of a region-wide tour promoting state flood-relief efforts.

Conclusions

Self-Help believes that this disaster relief program offers a unique opportunity to bring quality child care to North Carolina and, through its example, to states throughout the nation. After the devastation of September 1999, the need for such a program has never been greater. If communities in the eastern part of the state are to recover completely, assisting in the care of their children must be a vital component of that effort. In addition, the unique loan forgiveness component of the program provides a chance to determine how such an incentive can impact quality improvement by child care providers. Thus, the flooding in Eastern North Carolina can be seen not only as a crisis but also as an opportunity. Through this program, Self-Help will not only assist in the rebuilding of Eastern North Carolina but in the creation of a program that will dramatically improve the quality of child care throughout the region. CP

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